

Title 32

LABOR

Chapters:

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- 02 (Reserved)**
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Chapter 01

RIGHT TO WORK

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Case Notes:

Workmen's Compensation Act of American Samoa is highly similar to, and seems to have been drawn largely from, the federal Longshoremen's and Harbor Workers' Compensation Act. A.S.C.A., Title 32; 33 U.S.C. §901 et seq. *Etimani v. Samoa Packing Co.*, 19 A.S.R.2d 1 (1991).

Research Guide: For provisions on employment of persons not permanent residents, see 41.0515.

32.0101 Public policy.

Inherent in the right to live is the right to work; and to require a person to be a member, or not to be a member, of a labor organization, as a compulsory condition of employment, is not in accord with fundamental principles of individual liberty and freedom of choice. It is therefore the public policy of American Samoa that the right of persons to work may not be denied or abridged on account of membership or nonmembership in any labor union or association.

History: 1976, PL 14-19 § 1.

32.0102 Definitions.

As used in this chapter, the following definitions apply:

(a) "Labor organization" means an organization, or an agency, or employee representation committee, plan or arrangement, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning

grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(b) “Person” includes a corporation, association, company, firm, or labor organization, as well as a natural person.

History: 1976, PL 14-19 § 2.

32.0103 Illegal agreement or practice.

Provisions in any agreement, express or implied, between an employer and labor organization, or any combination, understanding, or practice whatsoever, which directly or indirectly make membership or nonmembership in a labor organization, or support or nonsupport of a labor organization, a condition of employment or continued employment, or a provision or practice which requires that an individual pay any fees, dues, assessments, sums of money, or any other charges of any kind whatsoever to a labor organization as a condition of employment or continued employment, is contrary to the public policy of American Samoa, and a provision in an agreement, and a practice or understanding, is illegal and is void.

History: 1976, PL 14-19 § 3.

32.0104 Unlawful acts of employer.

It is unlawful for any employer to:

- (1) require an employee, as a condition of employment or of continuance of employment, to be or become or remain a member or affiliate of a labor organization;
- (2) require an employee, as a condition of employment or of continuance of employment, to pay fees, dues, assessments, sums of money, or other charges of any kind whatsoever to any person or organization; or
- (3) enter into any agreement, understanding, or practice declared to be illegal by 32.0103.

History: 1976, PL 14-19 § 4.

Case Notes:

Alleged employment discrimination on account of attempt to organize union is not covered in local law and is clearly preempted by jurisdiction of NLRB over such cases. 29 U.S.C. § 157, 158. *Su’a v. Star Kist*, 4 A.S.R.2d 135 (1987).

32.0105 Unlawful acts of labor organization.

It is unlawful for a labor organization to:

- (1) require, or seek to require, an employee, as a condition of employment or of continuance of employment, to be or become or remain a member or affiliate of a labor organization;
- (2) require, or seek to require, an employee, as a condition of employment or of continuance of employment, to pay fees, dues, assessments, or any sums of money or any other charges of any kind whatsoever to a person or labor organization; or
- (3) engage in a strike, picketing, work stoppage, slowdown, boycott, or other action or conduct, a purpose or effect of which is to force, coerce, induces or persuade, or otherwise impose upon, an employer to enter into an agreement, understanding, or practice declared to be illegal by 32.0103.

History: 1976, PL 14-19 § 5.

32.0106 Liability for damages.

(a) An employer or labor organization which violates any provision of 32.0103 through 32.0105 is liable to a person or party injured as a result of the violation for the actual damages as may have been sustained by that person.

(b) An employee who may be denied initial employment or deprived of continuance of his employment in violation of 32.0103 through 32.0105 is also entitled to recover costs and attorney's fees which may have been sustained or incurred by a party to an action, and, in the discretion of the court, punitive damages in addition to the actual damages as may be sustained. If a person is denied initial employment or is deprived of continuance of his employment by an employer, and the denial or deprivation was the result, in whole or in part, of conduct on the part of a labor organization, which conduct is declared illegal by paragraph (3) of 32.0105, then in no case shall the denial of initial employment or deprivation of continued employment be considered to be the result, in whole or in part, of any action or conduct on behalf of the employer, but shall be considered to be caused solely by the acts of the labor organization.

History: 1976, PL 14-19 § 6.

32.0107 Injunctive relief.

Any person injured or threatened with injury by an act declared unlawful by this chapter is, notwithstanding any other provision of law to the contrary, entitled to injunctive relief therefrom.

History: 1976, PL 14-19 § 7.

32.0108 Criminal sanction.

(a) An employer or labor organization, or a person acting for an employer or labor organization, who violates any of the provisions of 32.0103 through 32.0105, or who aids and abets in a violation, is guilty of a class B misdemeanor.

(b) Each day of continued violation after conviction constitutes a separate offense and shall be punishable as provided.

(c) In a prosecution against an employer or person acting for an employer for violation of this section, the employer or person acting for an employer may assert as a complete defense thereto that the employer or person acting for an employer engaged in the activity proscribed by 32.0104, or entered into an agreement made illegal by 32.0103, in whole or in part, as a result of the conduct or activity of a labor organization declared unlawful in paragraph (3) of 32.0105.

History: 1976, PL 14-19 § 8, and 1988, PL 16-90 § 83.

Amendments: 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

32.0109 Applicability.

The provisions of this chapter do not apply to any lawful contract in force at the time of the effective date of this chapter, but they apply to all acts and contracts thereafter entered into and to any renewal or extension of an existing contract thereafter occurring.

History: 1976, PL 14-19 § 10.

Chapter 02

(RESERVED)

Chapter 03

WAGES AND HOURS

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I. General Provisions

32.0301 Short title.

This chapter may be cited as the “Minimum Wage and Hour Act of American Samoa”.

History:1965, PL 9-23.

32.0302 Policy.

It is the policy of this chapter to:

- (1) establish minimum wages and maximum hour standards at levels consistent with the public health, efficiency and general well-being of workers;
- (2) safeguard existing minimum wage and maximum hour standards which are adequate to the health, efficiency and general well-being of workers from the effects of the serious and unfair competition resulting from wage and hour standards detrimental to the health, efficiency and general well-being of workers; and
- (3) increase employment opportunities.

History:1965, PL 9-23.

32.0303 Definitions.

As used in this chapter, the following definitions apply:

- (a) “Agriculture” means a culture as defined in 29 U.S.C. § 203 (f), or as the same may be amended from time to time.
- (b) “Board” means the Wage and Hour Board.
- (c) “Employ” includes to permit or suffer to work.
- (d) “Employee” includes any individual employed by an employer, but shall not include any individual employed:
 - (1) in agriculture for any workweek in which the employer of the individual employs fewer than 5 persons;
 - (2) in domestic employment in or about a private home;
 - (3) by his brother, sister, brother-in-law, sister-in-law, son, daughter, spouse, parent or parent-in-law;
 - (4) by a nonprofit school during the time such individual is a student attending such school;
 - (5) as a newspaper boy in the delivery of newspapers to the consumer: or
 - (6) in any capacity if by reason of his employment in such capacity and during the terms thereof, the minimum wage which may be paid such employee or the maximum hours which such employee may work during any workweek without the payment of overtime is prescribed by the Federal Fair Labor Standards Act of 1938, or as the same may be amended from time to time:
 - (7) as a salaried employee of the government under a written contract at an annual salary of \$5,000 or more:
 - (8) as a supervisory, professional or technical employee of the government at an hourly wage of \$2 or more.
- (e) “Employer” includes any individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons acting directly or indirectly

in the interest of an employer in relation to an employee, and it includes the government, but does not include the United States Government.

(f) "Industry" means a trade, business, industry or branch thereof, or group of industries. in which individuals are employed.

(g) "Wage" means legal tender of the United States, or checks on banks convertible into cash on demand at full face value thereof, and in addition thereto, the reasonable cost, as determined by the Board, to the employer of furnishing an employee with board, lodging or other facilities if such board, lodging, or other facilities are customarily furnished by such employer to his employees, but does not include tips or gratuities of any kind.

(h) "Week" means any period of 7 consecutive days.

History: 1965, PL 9-23.

32.0304 Wage and Hour Board-Composition-Terms.

(a) This chapter shall be enforced and administered by the Wage and Hour Board, which shall consist of 5 members to be selected as follows:

(1) The chairman shall be the personnel officer of the government and shall be chairman for as long as he is the personnel officer.

(2) The House of Representatives of the Legislature of American Samoa, by its Speaker, shall appoint 1 member of the Board.

(3) The Senate of the Legislature of American Samoa, by its President shall appoint 1 member of the Board.

(4) The Governor of American Samoa shall appoint 2 members of the Board.

(b) With the exception of the chairman, all members of the Board shall hold office for the period of 1 year.

(c) Members may be reappointed to the Board.

History: 1965, PL 9-23.

32.0305 Wage and Hour Board-Powers and duties.

(a) The Board:

(1) may prepare and promulgate such rules as it deems necessary for the enforcement of this chapter:

(2) shall prepare and promulgate, after a public hearing, such wage and hour orders as it deems necessary for the operation and enforcement of this chapter. Wage and hour orders requiring the payment of minimum wages shall require the approval of the Governor of American Samoa before they become effective.

(b) For any occupation, the Board shall make and revise, subject to the approval of the Governor, such rules, including definitions of terms, as it may deem appropriate to carry out the purposes of, or necessary to prevent the circumvention or evasion of this chapter and to safeguard minimum wage rates. Such regulations may include, but are not limited to:

- (1) regulations defining and governing outside salesmen;
- (2) learners and apprentices, and their number and pay;
- (3) special pay for special or extra work;
- (4) charges to employees for allowances for board, lodging, apparel or other facilities or services customarily furnished by employers to employees;
- (5) allowances for gratuities;

(6) allowances for such special conditions or circumstances as may be usual in a particular employment relationship.

(c) Regulations or revisions thereof pursuant to this section may be made only after a public hearing held subsequent to publication of notice of the hearing, at which any person may be heard.

(d) Regulations or revisions, except as otherwise provided, take effect upon promulgation after approval by the Governor.

History: 1965, PL 9-23.

32.0306 Oaths and subpoenas-Failure to comply.

(a) The Board or its authorized representative may administer oaths, take or cause to be taken the depositions of witnesses, and require by subpoena the attendance and testimony of witnesses and the production of all books, records, and other evidence relative to any matter under investigation.

(b) Subpoenas must be signed and issued by the Board or its authorized representative.

(c) In case of failure of any person to comply with any subpoena lawfully issued under this section, or refusal of any witness to produce evidence or to testify to any matter regarding which he may be lawfully interrogated, the Chief Justice or an Associate Justice of the High Court of American Samoa, upon the application of the Board or its authorized representative, shall compel obedience by a proceeding for contempt, as in the case of disobedience of the requirements of a subpoena issued by such court or a refusal to testify therein.

(d) No person may be excused from attending and testifying or from producing books, papers, correspondence, memoranda, contracts, agreements, or other records and documents before the Board or its authorized representative, or in obedience to the subpoena of the board or its authorized representative, or in any cause or proceeding instituted under this chapter, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture, but no individual may be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that such individual so testifying may not be exempt from prosecution and punishment for perjury committed in so testifying.

(e) The Board may certify to official acts.

History: 1965, PL 9-23.

32.0307 Employer records.

(a) Every employer shall keep, in or about the premises wherein any employee is employed, and for such period of time as the board may by regulation prescribe, a record of:

- (1) the name, address and occupation of each employee;
- (2) the amount paid each pay period to each employee;
- (3) the hours worked each day and each workweek by each employee;
- (4) such other information as the Board may by regulation prescribe.

(b) The Board or its authorized representative shall, for the purpose of examination, have access to and the right to copy from such records.

(c) The Board or its authorized representative shall have the right to inspect and use as

evidence all reports and/or statements of any kind or nature submitted to any department of the government for the purpose of enforcing the provisions of this chapter.

(d) Every employer shall furnish to the Board or its authorized representative such information relating to the employment of workers and in such manner as the board may prescribe.

History: 1965, PL 9-23.

32.0308 Confidentiality of information.

Any information secured from inspection of employers' records, or from transcriptions, or from the taking of transcriptions, or from inspection of the employers' premises by the Board or its authorized representative, which may be used in connection with their official duties or within the scope and course of their employment but not otherwise, may not be divulged to other than officials concerned with, and solely for the purposes of, the administration of the laws of this territory relating to matters under the jurisdiction of the Board.

History: 1965, PL 9-23.

32.0309 Distribution of copies of chapter and of orders, rules and regulations,

(a) The Board shall cause this chapter to be printed and copies furnished to interested persons upon request without charge.

(b) Copies of orders of the Board and of rules and regulations of the Board shall also be furnished to employers affected thereby without charge.

History: 1965, PL 9-23.

32.0310 Collective bargaining not impaired.

Nothing in this chapter may be deemed to interfere with, impede or in any way diminish the right of employees to bargain collectively through representatives of their own choosing in order to establish wages in excess of the applicable minimum under this chapter or to establish hours of work shorter than the applicable maximum under this chapter.

History: 1965, PL 9-23.

32.0311 Cooperation with federal government.

In the administration of this chapter, the Board shall cooperate, to the fullest extent consistent with the provisions of this chapter with the Administrator of the Wage and Hour Division, United States Department of Labor.

History: 1965, PL 9-23.

II. Minimum Hours and Wages

32.0320 Minimum wage.

Every employer shall, except as the Board may provide pursuant to 32.0321 and 32.0322, pay to each employee employed by him wages at the rate of not less than 70 cents per hour. This section applies only to those employees not now covered by the present Merit System Law and Federal Minimum Wage Schedule established by the U.S.

Department of Labor on 5 June 1967.

History: 1968, PL 10-41.

Case Notes:

Territorial minimum wage statute, including provision for punitive damages for willful failure to pay territorial minimum wage, does not apply to employees covered by provisions of federal minimum wage law. A.S.C.A. §§ 32.0320, 32.0340. *Moea'i v. Reid*, 9 A.S.R.2d 48 (1988).

Punitive damages provision of territorial minimum wage statute, for willful failure to pay the minimum wage, is limited to a claim based on the difference between the employee's hourly wage and the minimum wage; this provision does not apply to an action for breach of contract where, although the employee has not been paid, his contractual wage was higher than the statutory minimum. A.S.C.A. §§ 32.0320, 32.0340. *Moea'i v. Reid*, 9 A.S.R.2d 48 (1988).

Employer's failure to pay overtime wage rate was not willful where employer (1) admitted liability for overtime payments; (2) disputed, not without merit, the number of overtime hours claimed by employee; and (3) offered uncontradicted testimony that nonpayment of other amounts was due to inability to pay. A.S.C.A. §§ 32.0320, 32.0340. *Moea'i v. Reid*, 9 A.S.R.2d 48 (1988).

Apparent conflicts between statutes can often be reconciled by application of the rule that the more specific statute prevails over the more general. *Id.*

Territorial minimum wage statute, including provision for punitive damages for willful failure to pay territorial minimum wage, does not apply to employees covered by provisions of federal minimum wage law. A.S.C.A. §§ 32.0320, 32.0340. *Moea'i v. Reid*, 9 A.S.R.2d 48 (1988).

32.0321 Wage rates for handicapped employees.

(a) The Board may provide by regulations, after public hearing at which any person may be heard, for the employment in any, occupation at individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, at such wages lower than the minimum wage rate provided in 32.0320 as the Board may find appropriate to prevent curtailment of opportunities for employment, avoid undue hardship and safeguard the minimum wage rate.

(b) No employee may be employed at wages fixed pursuant to this section except under a special license issued under applicable regulations.

History: 1965, PL 9-23.

32.0322 Wage rates for apprentices.

(a) The Board may provide by regulation, after a public hearing at which any person may be heard, for the employment in any occupation, of learners and apprentices at such wages lower than the minimum wage rate provided in 32.0320 as the Board may find appropriate to prevent curtailment of opportunities for employment and to safeguard the minimum wage rate

(b) No employee may be employed at wages fixed pursuant to this section except, under special license issued under applicable regulations.

History: 1965, PL 9-23.

32.0323 Maximum hours.

(a) No employer may employ an employee in excess of 40 hours a week unless such employee receives compensation for employment in excess of such weekly hours, at a rate not less than 1 ½ times the regular rate at which he is employed.

(b) No employer may employ an employee over 14 hours in any one 24-hour period, except in case of extraordinary emergency.

History: 1965, PL 9-23, and 1977, PL 15-14.

Amendment: 1977 subsection (d): substituted “40” for “48”

Case Notes:

Statutory provision for punitive damages for willful failure to pay overtime wage rates is applicable whether or not the ordinary wage rate is determined by contract. A.S.C.A. §§ 32.0323, 32.0340. *Moea'i v. Reid*, 9 A.S.R.2d 48 (1988).

III. Payment of Wages

32.0330 Termination of employment-Time for payment.

The earned wages of all employees discharge by an employer, either with or without cause, are immediately due and payable upon discharge. If an employee leaves his employment voluntarily, his earned wages are due and payable on the next regular payday.

History: 1965, PL 9-23.

32.0331 Termination of employment-Payment when amount is disputed.

(a) In case of a dispute over wages resulting in, or existing at the time of termination at employment, the employer shall give notice to the employees of the amount of wages which he concedes to be due and the same is payable without any conditions whatsoever at the time fixed by 32.0330.

(b) The acceptance by the employees of such payment may not constitute a release or accord and satisfaction with respect to the disputed amount.

History: 1965, PL 9-23.

32.0332 Fines not to be deducted from compensation.

No fines may be collected, deducted or retained by any person out of any compensation earned by any employee.

History: 1965, PL 9-23.

32.0333 Deductions from wages.

It is unlawful for any person to deduct and return any part or portion of any compensation earned by any employee except where required by a Federal or Territorial statute or by court process or when such deductions are authorized in writing by the employee, provided that deductions for fines may not be so authorized.

History: 1965, PL 9-23.

Case Notes:

It is generally unlawful to garnish more than 25% of an individual's disposable earnings, or to deduct earnings unless the employee has agreed in writing. 15 U.S.C. § 1673; A.S.C.A. § 32.0333. *Sa'aga v. Sa'aga*, 20 A.S.R.2d 18 (1991).

IV. Civil and Criminal Provisions

32.0340 Liability of employers for unpaid minimum wages or overtime.

Any employer who violates any provision of 32.0320 and 32.0323 shall be liable to the employee or employees affected in the amount of their unpaid minimum wages or unpaid overtime compensation; and in case of willful violation, is liable for an additional equal amount of liquidated damages.

History: 1965, PL 9-23.

Case Notes:

Territorial minimum wage statute, including provision for punitive damages for willful failure to pay territorial minimum wage, does not apply to employees covered by provisions of federal minimum wage law. A.S.C.A. §§ 32.0320, 32.0340. *Moea'i v. Reid*, 9 A.S.R.2d 48 (1988).

Punitive damages provision of territorial minimum wage statute, for willful failure to pay the minimum wage, is limited to a claim based on the difference between the employee's hourly wage and the minimum wage; this provision does not apply to an action for breach of contract where, although the employee has not been paid, his contractual wage was higher than the statutory minimum. A.S.C.A. §§ 32.0320, 32.0340. *Moea'i v. Reid*, 9 A.S.R.2d 48 (1988).

Employer's failure to pay overtime wage rate was not willful where employer (1) admitted liability for overtime payments; (2) disputed, not without merit, the number of overtime hours claimed by employee; and (3) offered uncontradicted testimony that nonpayment of other amounts was due to inability to pay. A.S.C.A. §§ 32.0320, 32.0340. *Moea'i v. Reid*, 9 A.S.R.2d 48 (1988).

Statutory provision for punitive damages for willful failure to pay overtime wage rates is applicable whether or not the ordinary wage rate is determined by contract. A.S.C.A. §§ 32.0323, 32.0340. *Moea'i v. Reid*, 9 A.S.R.2d 48 (1988).

Apparent conflicts between statutes can often be reconciled by application of the rule that the more specific statute prevails over the more general. *Id.*

Territorial minimum wage statute, including provision for punitive damages for willful failure to pay territorial minimum wage, does not apply to employees covered by provisions of federal minimum wage law. A.S.C.A. §§ 32.0320, 32.0340. *Moea'i v. Reid*, 9 A.S.R.2d 48 (1988).

32.0341 Actions before the Administrative Law Judge.

(a) Actions under 32.0340 may be in the Office of the Administrative Law Judge by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated.

(b) The Administrative Law Judge, in addition to any judgment awarded the plaintiff or plaintiffs, shall, in the event the plaintiff or plaintiffs prevail, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

(c) At the request of any person paid less wages or compensation than the amount to which he or she is entitled under the provisions of this chapter, the Board may take an assignment in trust for the assigning employee of the full amount to which he is entitled under this section and may bring any legal action necessary to collect such claim; and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the judge in the event the board prevails. The Board shall not be required to pay the filing fee or other costs in connection with such action. The Board may join various claimants against the same employer in one cause of action if the claims arise at different times.

History: 1965, PL 9-23; amd 1998, PL 25-37.

32.0342 Restitution of illegally deducted wages.

Whenever, in the course of an inspection made for the purposes of 32.0330 through 32.0333, it is determined that there has been an illegal deduction of wages under 32.0332

or 32.0333, the Board or its authorized representative may secure restitution of such deductions. If such restitution is made, no prosecution under 32.0349 may be instituted or maintained.

History: 1965, PL 9-23.

32.0343 Preference of claim for wages when business is suspended for financial reasons.

(a) When the business of any person, corporation, company or firm is suspended as a result of a writ of execution or attachment or is placed in the hands of a receiver, trustee or assignee or creditors, then all cases of claims for wages at not more than \$300 for each claimant, earned within 6 months of the date such business is suspended or placed in the hands at a receiver, trustee or assignee for creditors, must be paid in full prior to the payment of taxes or any other debts except a debt secured by a mortgage duly recorded before the wages were earned.

(b) Any employee desiring to enforce his claim for wages shall present a statement under oath showing the amount due, the kind of work for which such wages are due, and when such work was performed, to the officer or person charged with such property, within 20 days after seizure of the property under any execution or writ of attachment or within 60 days after such property has been placed in the hands of a receiver, trustee, or assignee for creditors.

(c) Any interested party may contest any claim or part thereof by filing sworn exceptions thereto with the officer, or person to whom the claim was presented, within 10 days after the period for filing claims, and thereupon, the claimant is required to reduce his claim to judgment before any part thereof shall be paid.

(d) No claim may be paid until after the expiration of the time for filing and contesting claims.

(e) If the funds realized from the sale of the property are insufficient to pay the total claims for wages presented, then such funds must be prorated between such claims.

History: 1965, PL 9-23.

32.0344 Injunction against violation of chapter or rule.

Whenever it appears to the board that any employer is engaged in any act or practice prohibited by this chapter or any provision of any rule, it may, in its discretion, bring an action before the Administrative Law Judge, charging the act or practice, and to enforce compliance with this chapter or such regulation. Upon a proper showing, a permanent or temporary injunction, decree or restraining order shall be granted without bond.

History: 1965, PL 9-23; 1998, PL 25-37.

32.0345 Enforcement of unpaid judgment.

If any judgment obtained by the Board against an employer for nonpayment of wages remains unsatisfied 30 days after the time to appeal therefrom has expired, and no appeal is pending, or after such judgment has been affirmed on appeal, the board may institute proceedings in the name of the board before the Administrative Judge to compel such employer to cease doing any business until such judgment has been satisfied. An order of the judge suspending the operation of a business shall not be subject to appeal except on a question of due process regarding notice and opportunity to show that the defendant has

in fact satisfied the judgment in question. The Board shall be entitled to reasonable attorney's fees and costs for an action under this section.

History: 1965, PL 9-23; 1998, PL 25-37.

32.0346 Violation of confidential records provisions.

(a) Any person who divulges information in violation of section 32.0308 is guilty of a class B misdemeanor, and upon conviction, shall be sentenced accordingly.

(b) Each day a violation continues shall constitute a separate offense.

History: 1965, PL 9-22; amd 1980, PL 16-90 § 2.

Amendments: 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

32.0347 Discrimination against employee taking action under this chapter.

(a) Any employer who discharges or in any manner discriminates against an employee who has made a complaint to the employer, or to the board or any other person, or has instituted or caused to be instituted, any proceeding under or related to this chapter, or has testified or is about to testify in such a proceeding, is guilty of a class B misdemeanor.

(b) Each day a violation continues shall constitute a separate offense.

History: 1965, PL 9-23; amd 1980, PL 16-90 § 73

Amendments: 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice

32.0348 Violation-Penalty.

(a) Any employer who knowingly violates any provision of this chapter or any rule or order issued under authority of this chapter is guilty of a class B misdemeanor.

(b) Each day a violation continues shall constitute a separate offense.

History: 1965, PL 9-23; amd 1980, PL 16-90 § 74.

Amendments: 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

32.0349 Violation of 32.0330 through 32.0333-Penalty.

Any person who, having the ability to pay, knowingly refuses to pay wages due and payable when demanded or who violates any provisions of 32.0330 through 32.0333 is guilty of a class B misdemeanor.

History: 1965, PL 9-23; amd 1980, PL 16-90 § 75.

Amendments: 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

32.0350 Hindering Board-Violation of required records provisions.

Any employer who knowingly hinders or delays the Board or its authorized representative in the performance of his duties in the enforcement of this title, or who knowingly refuses to admit the Board or its authorized representative to any place of employment, or who fails to keep or falsifies any record required under 2.0307, or who refuses to make such records accessible or to give information required for the proper enforcement of this title, upon demand, to the Board or its authorized representative, is guilty of a class B misdemeanor.

History: 1965, PL 9-23; amd 1980, PL 16-90 § 76

Amendments: 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

32.0351 Prima facie evidence.

Failure of an employer to pay an employee any minimum wage or overtime compensation required by 32.0320 or 32.0323 shall constitute prima facie evidence of a violation of such sections.

History: 1965, PL 9-23.

Chapter 04

(RESERVED)

Chapter 05

**WORKMEN'S COMPENSATION-GENERAL PROVISIONS AND
ADMINISTRATION**

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I. GENERAL

32.0501 Short title.

This chapter and Chapter 32.06 may be cited as the “Workmen’s Compensation Act”.

History: 1967, PL 10-15.

Case Notes:

American Samoa's Workmen's Compensation Act does not explicitly provide for a right of subrogation where an employee receives compensation without a formal award and then recovers from a third party; however, an employer has an equitable right of subrogation and is entitled to be reimbursed from an employee's net recovery, whether by judgment or settlement, from a third party. A.S.C.A. §§ 32.0501 et seq. *Vaeao v. Samoa Air*, 20 A.S.R.2d 37 (1991).

American Samoa's Workmen's Compensation Act is similar to and appears to have been based on the federal Longshoremen and Harbor Workers' Compensation Act. 33 U.S.C. §§ 901 et seq.; A.S.C.A. §§ 32.0501 et seq. *Harris v. Commissioner of the American Samoa Government Workmen’s Compensation Commission*, 24 A.S.R.2d 158 (1993).

American Samoa's Workmen's Compensation Act was essentially modeled on the federal Longshoremen and Harbor Workers Compensation Act. 33 U.S.C. §§ 901 et seq.; A.S.C.A. §§ 32.0501 et seq. *Vaeao v. Samoa Air*, 20 A.S.R.2d 37 (1991).

American Samoa's Workmen's Compensation Act seems to have been drawn largely from the federal Longshoremen's and Harbor Workers' Compensation Act. 33 U.S.C. § 933; A.S.C.A. §§ 32.0501 et seq. *Patau v. Rosendahl Corp.*, 19 A.S.R.2d 80 (1991).

32.0502 Definitions.

As used in this chapter and Chapter 32.06, the following definitions apply:

(a) "American Samoa", when used in a geographical sense, means the Territory of American Samoa, including the Territorial waters thereof.

(b) "Carrier" means any person or fund authorized under this chapter and Chapter 32.06 to insure under this chapter and Chapter 32.06 and includes self-insurers.

(c) "Child" means a person under 18 years of age, a person 18 years of age or over and physically or mentally incapable of self-support, or any person 18 years of age or over who is actually dependent, or any person between 18 and 25 years of age who is enrolled as a full-time student in any accredited educational institution. The term "child" includes a posthumous child, a child legally adopted or regarding whom adoption proceedings are pending at the time of death, an actually dependent child in relation to whom the deceased employee stood in the place of a parent for at least one year prior to the time of death, an actually dependent stepchild and an actually dependent acknowledged illegitimate child.

(d) "Commission" means the Workmen's Compensation Commission.

(e) "Commissioner" means the head of the Workmen's Compensation Commission.

(f) "Employees" means any individual in the service of an employer as defined in subsection (g). Every individual working with or without pay whose services are requested or volunteered, and who serves under the direction of a public official, shall be deemed to be an employee of the government for the purposes of this chapter and Chapter 32.06, and if injured in the course or such work, shall be entitled to the benefits of this chapter and Chapter 32.06.

(g) "Employer", except when otherwise expressly stated, includes any person, the government, the legal representatives of a deceased employer, and the receiver or trustee of a person, partnership, association, or corporation.

(h) "Grandchild" means a child, as previously defined, of a child, except that as to the latter child, the limitations as to age in the above definitions do not apply.

(i) "Injury" means any harmful change in the human organism arising out of and in the course of employment, including damage to or loss of a prosthetic appliance, but does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment.

(j) "Person" means any individual, partnership, corporation or association.

History: 1967, PL 10-15.

Case Notes:

Although occupational diseases differ from "typical" injuries in that they generally do not have a discrete and readily identifiable instant of occurrence, and although this may give rise to difficulties in the proof of causation, such diseases are injuries under the American Samoa Workmen's Compensation statute. A.S.C.A. § 32.0502(i). *Continental Insurance Co. v. Workmen's Compensation Commission*, 15 A.S.R.2d 130 (1990).

II. ADMINISTRATION

32.0505 Commission-Members.

(a) The Workmen's Compensation Commission, composed of 5 members, is created.

(b) It consists of a Commissioner, a medical officer, a law member, a fiscal member and an employee member, all to be appointed by the Governor.

(c) The Commission shall maintain and keep open, during reasonable business hours, an office for the transaction of business.

(d) If any member of the Commission is removed from office or for any reason ceases to act as a member, all of his official records and papers shall be transferred to his successor in office or to the Commission.

(e) No member or business associate of a member may appear as attorney in any proceedings under this chapter and Chapter 32.06. No member may act in any such case in which he is interested, or when he is employed by any party in interest or related to any party in interest by consanguinity or affinity within the third degree as determined by the common law.

(f) No member of the Commission shall receive compensation for services rendered under this chapter and Chapter 32.06, except for reimbursement for reasonable travel expenses incurred in the performance of duty.

History: 1967, PL 10-15.

Case Notes:

3 of 5 commissioners is majority.

Haleck v Scanlan. ASR (1978)

When the medical officer of the Workmen's Compensation Commission was removed on the plaintiff's own motion and in accordance with statute because the physician was an employee of ASG and ASG was a party to the proceedings, there is nonetheless substantial compliance with the statute. A.S.C.A. § 32.0505. Continental Insurance Co. v. Workmen's Compensation Commission, 15 A.S.R.2d 130 (1990).

32.0506 Commission-Powers.

Except as otherwise specifically provided, the Workmen's Compensation Commission shall administer the provisions of this chapter, Chapter 32.06 and for such purposes as the Commission is authorized to:

- (1) make rules and regulations in conformity with this chapter and Chapter 32.06;
- (2) select such technical assistance, medical advisors and other officers and employees as may be necessary for the proper administration of this chapter and Chapter 32.06;
- (3) make, from appropriated funds, such expenditures, including expenditures for personal services, rent, law books, books of reference, periodicals, printing, binding and other necessities, as may be necessary in the administration of this chapter and Chapter 32.06.

History: 1967, PL 10-15.

32.0507 Commission-Vocational rehabilitation of disabled employees.

(a) The Commission shall direct the vocational rehabilitation of permanently disabled employees and shall arrange with the appropriate public or private agencies for such education.

(b) The Commission may, in its discretion, furnish such prosthetic appliance or other apparatus made necessary by an injury upon which an award has been made under this chapter and Chapter 32.06 to render a disabled employee fit to engage in a remunerative occupation.

History: 1967 PL 10-15.

32.0508 Commission-Studies and investigations-Cooperation with

other agencies.

(a) The Commission shall make studies and investigations with respect to safety provisions and the causes of injuries in employment covered by this chapter and Chapter 32.06 and shall from time to time make to the legislature and to employers and carriers such recommendations as it may deem proper as to the best means of preventing such injuries.

(b) In making such studies and investigations, the Commission is authorized to cooperate with any agency charged with the duty of enforcing any law, securing safety against injury in any employment covered by this chapter and Chapter 32.06, engaged in enforcing any law to assure safety for employees, and to permit any such agency to have access to the records of the Commission.

(c) In carrying out the provisions of this section, the Commission or any officer or employee of the Commission is authorized to enter at any reasonable time upon any premises, tracks, wharf or dock, or to enter any building, where an employment covered by this chapter is being carried on, and to examine any tools, appliances or machinery used in such employment.

History: 1967, PL 10-15.

32.0509 Commission-Annual report.

The Commission shall make to the American Samoa Legislature, at the beginning of each regular session, a report of the administration of this chapter and Chapter 32.06 for the preceding fiscal year, including a detailed statement of receipts of and expenditures from the funds established or authorized in 32.0515 and 32.0516, together with such recommendations as the Commission deems desirable.

History: 1967 PL 10-15

32.0510 Powers of Commissioner.

The Commissioner has power to preserve and enforce order during any proceedings, issue subpoenas, administer oaths, compel the attendance and testimony of witnesses and the production of books, papers, documents and other evidence, compel the taking of depositions before any designated individual competent to administer oaths, examine witnesses, and to do all things conformable to law which may be necessary to enable him effectively to discharge the duties to his office.

History: 1967, PL 10-15

32.0511 Special fund for payment of expenses in administering chapter.

(a) There is established in the treasury at American Samoa a special fund for the purpose of providing for the payment of all expenses respect of the administration of this chapter and Chapter 32.06.

(b) The fund shall be administered by the Commissioner.

(c) The Treasurer of American Samoa shall be the custodian of the fund, and all moneys and securities in the fund shall be held in trust by the Treasurer and are not the money or property of American Samoa.

(d) The Treasurer is authorized to disburse moneys from such fund only upon order of the commission.

(e) The Treasurer of American Samoa shall deposit any moneys paid into such fund

into such depository banks as the commission may designate and may invest any portion of the funds which, in the opinion of the Commission, is not needed for current requirements, in bonus or notes of the United States or of any federal land bank.

(f) The account for such fund shall be subject to audit in accordance with established government auditing procedure, but the action at the Commission in making payments from such fund shall be final and not subject to review.

History: 1967, PL 10-15.

III. FUND

32.0515 Fund for payment of compensation to employees of territorial government.

(a) There is authorized to be established, out of any money in the Treasury of American Samoa not otherwise appropriated, a fund sufficient to secure compensation payments under this chapter and Chapter 32.06 in respect of employees of the government.

(b) The Treasurer of American Samoa shall be the custodian of the fund and is authorized to disburse moneys from it only upon order of the Commission.

(c) The Treasurer shall deposit any moneys appropriated or paid into the fund into such depository banks as the Commission may designate, and may invest any portion of the funds which in the opinion of the Commission is not needed for current requirements in bonds or notes of the United States or of any federal land bank.

(d) The account for such fund shall be subject to audit in accordance with established government auditing procedure, but the action of the Commission in making payments from such fund shall be final and are not subject to review

(e) With respect to government employees, the Commission may authorize direct compensation payments from such fund or, if it deems it desirable, insure and keep insured the payment of such compensation with any stock company or mutual company or association.

History: 1967, PL 10-15.

32.0516 Special fund for payment of compensation for injury increasing preexisting disability and for maintenance of those undergoing vocational rehabilitation.

(a) There is established a special fund for the purpose of making payments in accordance with the provisions of 32.0613 and 32.0615.

(b) The fund shall be administered by the Commission.

(c) The Treasurer of American Samoa shall be the custodian of the fund, and all moneys and securities in the fund shall be held in trust by the Treasurer and are not the money or property of the government,

(d) The Treasurer is authorized to disburse moneys from the fund only upon order of the Commission,

(e) Payments into the fund shall be made as follows:

(1) Each employer shall pay \$1,000 as compensation for the death of an employee or such employer resulting from injury where the Commissioner determines that there is no person entitled, under this chapter or Chapter 32.06, to compensate for such death.

(2) All amounts collected as fines and penalties under the provisions of this chapter and Chapter 32.06 shall be paid into the fund.

(f) The Treasurer shall deposit any moneys paid into the fund into such depository banks as the Commission may designate and may invest any portion of the funds which, in the opinion of the Commission, is not needed for current requirements, in bonds or notes of the United States or of any federal land bank.

(g) Neither the government nor the Commission is liable for payments authorized under 32.0613 and 32.0615 in an amount greater than the money or property deposited in or belonging to the fund,

(h) The account for the fund shall be subject to audit in accordance with established government auditing procedure, but the action of the Commission in making payments from such fund shall be final and not subject to review.

History: 1967 PL 10-15.

32.0517 Authorization of appropriations.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter and Chapter 32.06.

History: 1967 PL 10-15.

IV. COVERAGE

32.0520 Liability of employer for compensation.

Every employer subject to this chapter and Chapter 32.06 shall be liable for compensation for injury to or death of his employees arising out of and in the course of employment without regard to fault as to cause of the injury or death.

History: 1967, PL 10-15.

Case Notes:

Irrelevant whether or not decedent speeding or driving under influence: benefits to be paid regardless of fault. *A.I.U.S.P. v. Workmen's Compensation Commission*, ASR (1979),

Compensation formula is stated in the conjunctive and both requirements must be met. *Hartford Fire Ins. Co. v. Workmen's Compensation Commission*. ASR (1977).

Court would not reverse Workmen's Compensation Commission finding that fatal heart attack "arose out of and in the course of" decedent's employment, even though the heart attack had occurred at home rather than at work, where the commission record reflected that (1) decedent had a history of heart trouble but medical treatment had brought his condition under control in the months preceding his heart attack; (2) decedent had recently been transferred from his job as a night watchman to a highway maintenance job involving physical labor; (3) the punitive and involuntary transfer had created emotional pressures that testifying physician cited as a possible factor in the heart attack; (4) after the transfer decedent's symptoms had taken a drastic turn for the worse; (5) the heart attack had occurred eleven days after decedent had begun work on the road crew. A.S.C.A. §§ 32.0520, 32.0652. *Continental Insurance Co. v. Workmen's Compensation Commission*, 7 A.S.R.2d 105 (1988).

32.0521 Liability for compensation-Exemptions.

(a) Liability for compensation does not apply where injury to the employee is occasioned solely by his intoxication or by his willful intention to injure or kill himself or another.

(b) Any person employing individuals for whom a rule of liability for injuries or death arising out of and in the course of employment is provided by the laws of the United States is not included under the provisions of this chapter and Chapter 32.06.

(c) A "minor employer" means an employer who has 2 or fewer employees regularly employed. Minor employers are not subject to this chapter and Chapter 3106 except as follows:

(1) If any employee of a minor employer files with the Commission a written

complaint that such employer is engaged in an occupation hazardous to employees, the Commission shall issue an order to show cause, returnable within 10 days thereafter, requiring such employer to appear and show cause why he should not be required to accept the provisions of this chapter or such order may be issued by the Commission upon its own motion.

(2) Upon hearing, the Commission shall determine whether or not such employer is engaged in an occupation hazardous to employees and such employer shall be conclusively presumed to have accepted the provisions of this title if the determination is in the affirmative.

(3) The Commission's determination shall be conclusive and binding unless an appeal is taken within 30 days to the High Court of American Samoa. Such appeal may be taken by filing notice of appeal with the Commission, whereupon the Commission shall, under its certificate, forward to the court all documents and papers on file in the matter, together with a transcript of all the evidence, findings and decision. Upon appeal, no additional evidence shall be heard and in the absence of fraud, the findings of fact made by the Commission within its powers shall be conclusive and binding.

History: 1967, PL 10-15.

Case Notes:

Occasioned solely by his intoxication means intoxication was sole cause. A.I.U S.P. v. Workmen's Compensation Commission. ASR (1979)

32.0522 Liability for compensation-Exclusiveness.

(a) The liability of an employer described in 32.0520 and 32.0521 shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents. Dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter or Chapter 32.06, an injured employee or his legal representative in case death results from the injury, may elect to claim compensation under this chapter or Chapter 32.06, and in addition, may maintain an action at law or in admiralty for damages on account of such injury or death. The amount of compensation shall be credited against the amount received in such action. If the amount of compensation is larger than the amount of damages received, the amount of damages less the employee's legal fees and expenses shall be credited against the amount of compensation.

(b) In such action, the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee.

History: 1967, PL 10-15.

Case Notes:

Act presumes employer's liability, but limits recovery and is the exclusive remedy absent allegations of actual intent. Turituri v. Star Kist Samoa, Inc., ASR (1979).

The "exclusive remedy" provision of the Workmen's Compensation Act extinguishes any tortious cause of action against an employer. A.S.C.A. § 32.0522(a). Etimani v. Samoa Packing Co., 19 A.S.R.2d 1 (1991).

32.0523 Right to compensation.

Benefits prescribed in this chapter and Chapter 32.06 shall be paid for injury arising out of and in the course of employment, which shall include travel between residence and

place of employment.

History: 1967, PL 10-15.

32.0524 Employers subject to chapter.

The following shall constitute employers subject to the provisions of this chapter and Chapter 32.06:

(1) every person who has in the Territory one or more employees are subject to this chapter;

(2) the territory, any agency or instrumentality thereof, including a public or quasi-public corporation, and any other political subdivision of the Territory which has one or more employees is subject to this chapter and Chapter 32.06;

(3) an employer who has in his employment any employees exempted under this chapter and Chapter 32.06 and who elects to be subject to this chapter and Chapter 32.06; such election shall be made by the employer by securing the payment of compensation to such exempted employees in accordance with 32.0530.

History: 1967, PL 10-15.

32.0525 Right of inmates of certain institutions to compensation.

(a) For purposes of this section, "inmate" includes any individual confined in a public institution, whether or not the institution is a penal institution. The term does not apply to students in schools for the deaf and blind or other similar institutions; it does apply to inmates of territorial mental institutions, homes for the feeble-minded, reformatories and prisons, and to county and local jails and the like.

(b) If an inmate, in the performance of his work in connection with the maintenance of the institution, or with any industry maintained therein, or with any highway or public works activity outside the institution, is injured so as to disable him permanently or materially reduce his earning capacity, he may, upon being released from such institution, either upon parole or upon final discharge, be awarded and paid compensation under this chapter and Chapter 32.06 for disability continuing upon release. If death results from such injury, death benefits shall be awarded and paid to the dependents of the inmate.

(c) The time limit for filing a claim under this section shall date from the death or the time of parole or final discharge or the time specified in 32.0627, whichever is later.

(d) If any individual who has been awarded compensation under the provisions of this section shall be recommitted to an institution covered by this section, such compensation shall immediately cease, but may be resumed upon subsequent parole or discharge.

(e) Payments shall be made from the appropriation for the operation of the particular industry or activity, but if there is no such appropriation, payment shall be made from the general fund of the Territory.

History: 1967, PL 10-15.

32.0526 Extraterritorial coverage of chapter.

(a) The provisions of this chapter and Chapter 32.06 shall apply in respect to the injury or death of an employee of an employer who carries on any employment in this Territory, irrespective of the place where the injury or death occurs. An employer entering into a contract of hire with an employee, express or implied, in this Territory, or elsewhere for employment in this Territory shall, as to such employee, be deemed to carry on employment in this Territory for the purposes of this section. In applying this

provision, due regard shall be given to the legitimate interests of the Territory in the protection and welfare of injured employees and their dependents and to the public policy of this Territory to provide an expeditious and convenient remedy under this chapter and Chapter 32.06 for residents of this Territory, whether employees or their dependents or individuals entitled to payment for services rendered in connection with cases cognizable under this chapter and Chapter 32.06, and for others likely to become public charges in this Territory as the result of injury or death occurring during employment.

(b) An individual who has filed a claim or taken other affirmative action seeking a remedy for injury or death under the workmen's compensation law of a jurisdiction other than this Territory, and who has been awarded compensation or has had an agreement with respect to compensation approved by proper authority, which award or agreement has not been reversed, shall, for purposes of this chapter and Chapter 32.06, be conclusively presumed to come exclusively within the coverage of the workmen's compensation law for such other jurisdiction, and not to be entitled to benefits under this chapter and Chapter 32.06 for the same injury or death. In case of death leaving more than one individual entitled to benefits for death, the provisions of this subsection shall apply only in respect to the individual or individuals seeking such other benefits and the payment of such other benefits shall not in any respect affect or diminish the rights of other beneficiaries in the same case under this chapter and Chapter 32.06.

History: 1967, PL 10-15.

V. INSURANCE

32.0530 Securing payments of compensation.

(a) Every employer shall secure the payment of compensation under this chapter and Chapter 32.06:

(1) by insuring and keeping insured the payment of such compensation with any stock company or mutual company or association or with any person or fund authorized by the Commission to transact the business of workmen's compensation insurance in the territory; or

(2) by furnishing satisfactory proof to the Commissioner of his financial ability to pay such compensation and receiving an authorization from the commissioner to pay such compensation directly. The Commissioner may, as a condition to such authorization, require such employer to deposit, in a depository designated by the Commissioner, either an indemnity bond or securities at the option of the employer, of a kind and in an amount determined by the Commissioner, and subject to such conditions as the Commissioner may prescribe, which shall include authorization to the Commissioner in case of default to sell any such securities sufficient to pay compensation awards or to bring suit upon such bonds, to procure prompt payment or compensation under this chapter and Chapter 32.06. Any employer securing compensation in accordance with the provisions of this paragraph shall be known as a self-insurer.

(b) Notwithstanding subsection (a) the government may make compensation payments under the provisions of this chapter and Chapter 32.06 from the special fund referred to in 32.0515.

History: 1967, PL 10-15.

32.0531 Authorization to insure payments-Suspension and revocation.

(a) In granting authorization to any carrier to insure payment of compensation under this chapter and Chapter 32.06, the Commission may take into consideration the recommendation or any authority having supervision over carriers or over workmen's compensation, and may authorize any carrier to insure the payment of compensation under this chapter and Chapter 32.06 in the territory.

(b) The Commission may suspend or revoke any such authorization for good cause shown after a hearing at which the carrier shall be entitled to be heard in person or by counsel and to present evidence. No suspension or revocation shall affect the liability of any carrier already incurred.

History: 1967, PL 10-15.

32.0532 Claims facilities.

The carrier shall provide claims facilities through its own staffed adjusting facilities located within the Territory or by independent, licensed, resident adjusters, with power to effect settlement within the Territory.

History: 1967, PL 10-15.

32.0533 Insurance policies-Requirements-Cancellation.

(a) Every policy or contract of insurance issued under authority of this chapter and Chapter 32.06 shall contain:

- (1) A provision to carry out the provisions of 32.0535;
- (2) A provision that insolvency or bankruptcy of the employer, or discharge therein, or both, does not relieve the carrier from payment of compensation for disability or death sustained by an employee during the life of such policy or contract.

(b) No contract or policy of insurance issued by a carrier under this chapter and Chapter 32.06 may be canceled prior to the date specified in such contract or policy for its expiration until at least 30 days have elapsed after a notice of cancellation has been sent to the Commissioner and to the employer in accordance with the provisions of subsection (c) of 32.0521.

History: 1967, PL 10-15.

32.0534 Posting of notice of securing payment of compensation.

(a) Every employer who has secured compensation under the provisions of this chapter and Chapter 32.06 shall keep posted in a conspicuous place or places in and about his place or places of business typewritten or printed notices, in accordance with a form prescribed by the Commission, stating that such employer has secured the payment of compensation in accordance with the provisions of this chapter and Chapter 32.06.

(b) Such notices shall contain the name and address of the carrier, if any, with whom the employer has secured the payment of compensation and the date of the expiration of the policy.

History: 1967, PL 10-15.

32.0535 Substitution of carrier for employer as liable party.

(a) In order that the liability for compensation imposed by this chapter and Chapter 32.06 may be most effectively discharged by the employer, and that the administration of this chapter and Chapter 32.06 regarding such ability may be facilitated, the Commission

shall by regulation provide for the discharge, by the carrier for an employer who is not a self-insurer, of the obligations and duties of the employer regarding the liability imposed by this chapter and Chapter 32.06 upon the employer as the Commission considers proper.

(b) For such purposes:

(1) Notice to or knowledge of an employer of the occurrence of the injury shall be notice to or knowledge of the carrier.

(2) Jurisdiction under this chapter and Chapter 32.06 over the employer by the commissioner, the Commission or any court shall be jurisdiction over the carrier.

(3) Any requirement by the Commissioner, the Commission or any court under any compensation order, finding or decision shall be binding upon the carrier in the same manner and to the same extent as upon the employer.

History: 1967, PL 10-15.

32.0536 Certificate of compliance.

All employers covered by this chapter and Chapter 32.06 shall file with the Workmen's Compensation Commission a certificate stating that they have complied with those provisions of this chapter and Chapter 32.06 requiring the securing of compensation to their employees.

History: 1967, PL 10-15.

VI. Penalty

32.0550 Disobeying order or obstructing hearing-Penalty.

If any individual in proceedings before the Commissioner disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper or document, or refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to the law, the Commissioner shall certify the facts to the High Court of American Samoa, which shall thereupon, in a summary manner, hear the evidence and punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the court.

History: 1967, PL 10-67.

32.0551 Failure to file report of death, injury or disease-Penalty.

Any employer who fails or refuses to send any report required of him by 32.0602 is subject to a civil penalty not to exceed \$500 for each such failure or refusal.

History: 1967, PL 10-15.

32.0552 Failure to give notice of final payment-Penalty.

If an employer fails to give notice under subsection (b) of 32.0661, the Commission shall assess against him a civil penalty of \$100.

History: 1967, PL 10-15.

32.0553 Collection of civil penalties.

All civil penalties provided for in this chapter shall be collected by civil suit brought by the Commissioner.

History: 1967, PL 10-15.

32.0554 Invalid agreements-Penalty.

(a) No agreement by an employee to pay any portion of a premium paid by his employer to a carrier, or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation or medical services and supplies as required by this chapter and Chapter 32.06, is valid. Any employer who makes a deduction for such purpose from the pay of any employee entitled to the benefits of this chapter and Chapter 32.06 is guilty of a class C misdemeanor.

(b) No agreement by an employee to waive his right to compensation under this chapter and Chapter 32.06 is valid.

History: 1967, PL 10-15, and 1980, PL 16-90 § 77.

Case Notes:

Disallowing compromise contracts between the employer and employee, the Workmen's Compensation Act bars an agreement to prevent the employee from receiving or altering the amount of compensation fixed and guaranteed to him by statute. A.S.C.A. §§ 32.0554(b), A.S.C.A. § 32.0672. *Etimani v. Samoa Packing Co.*, 19 A.S.R.2d 1 (1991).

Because American Samoa's Workmen's Compensation Act disallows compromise contracts between the employer and employee, the employer's liability for workmen's compensation benefits, fixed and guaranteed under the Act, may not be altered by way of contract. A.S.C.A. §§ 32.0554(b), 32.0672. *Patau v. Rosendahl Corp.*, 19 A.S.R.2d 80 (1991).

Amendments: 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

32.0555 Receipt of illegal fees-Penalty.

Any person who receives any fee, other consideration, or any gratuity on account of services rendered contrary to 32.0671, unless such consideration or gratuity is approved by the commissioner or court, or who makes it a business to solicit employment for a lawyer or for himself in respect to any claim or award for compensation, is guilty of a class A misdemeanor and shall, for each offense, be sentenced accordingly.

History: 1967, PL 10-15, and 1980, PL 16-90 § 78.

Amendments: 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

32.0556 False or misleading statements-Penalty.

Any person who knowingly makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this chapter or Chapter 32.06 or for the purpose of evading liability for any benefit or payment under this chapter and Chapter 32.06 is guilty of a class A misdemeanor.

History: 1967, PL 10-15; and 1980, PL 16-90 § 79.

Amendments: 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

32.0557 Failure to secure payment of compensation-Penalty.

(a) Any employer required to secure the payment of compensation under this chapter or Chapter 32.06 who fails to secure such compensation is guilty of a class A misdemeanor.

(b) Where such employer is a corporation, the president, secretary, and treasurer thereof shall also be liable, severally, for such fine or imprisonment, and such president, secretary, and treasurer shall be severally personally liable, jointly with such corporation, for any compensation or other benefit which may accrue under this chapter or Chapter 32.06 in respect to any injury which may occur to any employee of such corporation while it so fails to secure the payment of compensation.

(c) This section shall not affect any other liability of an employer under this chapter or Chapter 32.06.

History: 1967, PL 10-15, amd 1980, PL 16-90 § 80.

Amendments: 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

32.0558 Transfer or destruction of property to avoid payment of compensation.

(a) Any employer who knowingly transfers, sells, encumbers, assigns or in any manner disposes of, conceals, secretes, or destroys any property belonging to such employer, after one of his employees has been injured within the purview of this chapter and Chapter 32.06, with intent to avoid the payment of compensation under this chapter and Chapter 32.06 to such employee or his dependents, is guilty of a class A misdemeanor.

(b) Where such employer is a corporation, the president, secretary, and treasurer thereof shall be severally liable for such penalty or imprisonment as well as jointly liable with such corporation for such fine.

(c) This section shall not affect any other liability of the employer under this chapter and Chapter 32.06.

History: 1967, PL 10-15; amd 1980, PL 16-90 § 81

Amendments: 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

32.0559 Violation of certificate of compliance requirements-Penalty.

Any person who violates 32.0536 is guilty of a class A misdemeanor.

History: 1967, PL 10-15, amd 1980, PL 16-90 § 82.

Amendments: 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

32.0560 Effect of unconstitutionality.

If any provision of this chapter and Chapter 32.06 is adjudged unconstitutional by the courts, and such adjudication has the effect of invalidating any payment of compensation under this chapter and Chapter 32.06, the period intervening between the time the injury was sustained and the time of such adjudication shall not be computed as a part of the time prescribed by this chapter and Chapter 32.06 for the commencement of any action against the employer in respect to such injury; but the amount of any compensation paid under this chapter and Chapter 32.06 on account of such injury shall be deducted from

the amount of damages awarded in such action in respect to such injury.

History: 1967 PL 10-15.

Chapter 06

WORKMEN'S COMPENSATION—PROCEDURES AND CLAIMS

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I. DISABILITY

32.0601 Record of injuries required.

Every employer shall keep a record in respect to any injury to an employee. Such record shall contain such information on disease, other disability, or death in relation to such injury as the Commission may by regulation require, and shall be available for inspection by the Commission or other governmental authority at such times and under such conditions as the Commission may by regulation prescribe.

History: 1967, PL 10-15.

32.0602 Reports of death, injury or disease-Use in evidence.

(a) Within 10 days from the date of any injury or death or from the date that the employer has knowledge of a disease or infection in respect to an injury, the employer shall send to the commission a report setting forth:

- (1) the name, address and business of the employer;
- (2) the name, address and occupation of the employee;

- (3) the cause and nature of the injury or death;
- (4) the year, month, day, and hour when, and the particular locality where, the injury or death occurred;
- (5) such other information as the Commission may require.
- (b) Additional reports in respect to an injury and the condition of the employee shall be sent by the employer to the Commission at such times and in such manner as the Commission may prescribe.
- (c) No report provided for in subsection (a) or (b) may be evidence of any fact stated in such report in any proceeding in respect to an injury or death for which the report is made.
- (d) The mailing of a required report in a stamped envelope, within the time prescribed in subsection (a) or under subsection (b) to the commission, shall constitute compliance with this section.

History: 1967, PL 10-15.

32. 0603 Failure to report injury or death-Time for filing claim suspended.

When an employer or carrier has been given notice, or the employer or his agent in charge of the business in the place where it occurred or the carrier has knowledge, of injury to or death of an employee and fails, neglects or refuses to file a report thereof as required by subsection (a) of 32.0602, the limitation in subsections (a) and (b) of 32.0627 does not begin to run against the claim of the injured employee or has dependents entitled to compensation, or in favor of either the employer or the carrier, until such report has been furnished as required.

History: 1967, PL 10-15.

32.0604 Start of compensation for disability.

No compensation may be allowed for the first three days of disability, except medical benefits. In case the injury results in disability of 14 calendar days or more, the compensation shall be allowed from the date of disability. If, at the time the disability begins, the employee is employed under a contract for hire, when full wages are continued, the time specified in this section does not begin to run until full wages are discontinued.

History: 1967, PL 10-15.

32.0605 Permanent total disability compensation.

(a) In case of total disability adjudged to be permanent, 66 2/3 percent of the employee's average weekly wages shall be paid during the continuance of such total disability.

(b) Loss, or loss of use, of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof shall, in the absence of conclusive proof to the contrary, constitute permanent total disability.

(c) In all other cases, permanent total disability shall be determined in accordance with the facts.

History: 1967, PL, 10-15.

32.0607 Temporary total disability compensation.

In case of disability total in character but temporary in duration. 66 2/3 percent of the employee's average weekly wages shall be paid during the continuance thereof.

History: 1967, PL 10-15.

32.0609 Permanent partial disability compensation.

(a) In case of disability partial in character but permanent in duration, the compensation shall be 66 2/3 percent of the employee's average weekly wages, which shall be in addition to any compensation for temporary total disability or temporary partial disability paid in accordance with 32.0607 or 32.0611 and shall be paid to the employee as follows:

- (1) arm lost, 312 weeks' compensation;
 - (2) leg lost, 288 weeks' compensation;
 - (3) hand lost, 244 weeks' compensation;
 - (4) foot lost, 205 weeks' compensation;
 - (5) eye lost, 160 weeks' compensation;
 - (6) thumb lost, 75 weeks' compensation;
 - (7) first finger lost, 46 weeks' compensation;
 - (8) great toe lost, 30 weeks' compensation;
 - (9) second finger lost, 30 weeks' compensation;
 - (10) third finger lost, 25 weeks' compensation;
 - (11) Toe other than great toe lost, 16 week' compensation;
 - (12) fourth finger lost, 15 weeks' compensation;
 - (13) loss of hearing: compensation for loss of hearing of one ear, 52 weeks; compensation for loss of hearing of both ears, 200 weeks;
 - (14) phalanges: compensation for loss of more than one phalange of a digit shall be the same as for loss of the entire digit, compensation for loss of the first phalange of a digit shall be one-half of the compensation for loss of the entire digit;
 - (15) amputation of arm or leg: compensation for an arm or a leg, if amputated at or above the elbow or the knee, shall be the same as for a loss of the arm or leg; if amputated between the elbow and wrist or the knee and the ankle, compensation shall be the same as for loss of a hand or foot;
 - (16) binocular vision or percentage of vision compensation for loss of binocular vision or for 80% or more of the vision of an eye shall be the same as for the loss of the eye;
 - (17) two or more digits: compensation for loss of 2 or more digits, or one or more phalanges of 2 or more digits, of a hand or foot may be proportioned to the loss of use of the hand or foot;
 - (18) total loss of use: compensation for permanent total loss of use of a member shall be the same as for loss of the member;
 - (19) partial loss or partial loss of use: compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member;
 - (20) disfigurement: the commission shall award proper and equitable compensation for serious facial, bodily, or head disfigurement, not to exceed 200 weeks' compensation.
- (b) In all other cases of permanent partial disability, the compensation shall be two-thirds of the difference between the employee's average weekly wages and his wage earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability; provided, that compensation payments shall be subject to reconsideration as to the degree of such impairment by the commissioner on

his own motion or upon application of any party in interest.

(c) In any case in which there shall be a loss of, or loss of use of, more than one member or parts of more than one member set forth in paragraphs (a) (1) through (a) (19), not amounting to permanent total disability, the award of compensation shall be for the loss of, or loss of use of, each such member or part thereof, which awards shall run consecutively, except that where the injury affects only 2 or more digits of the same hand or foot, paragraph (a) (17) shall apply.

History: 1967, PL 10-15, amd 1976, PL, 14-24; amd 1984, PL 18-33.

Amendments: 1976 Subsection (a)(20). provided for compensation for bodily disfigurement.
1984 Subsection (a) (20) changes compensation from \$3,500 to 200 weeks.

Case Notes:

As a matter of law, a worker who lost his forearm was entitled to 244 weeks of compensation; in addition, the Workmen's Compensation Act also provides for up to 200 weeks of compensation in cases of serious bodily disfigurement. A.S.C.A. §§ 32.0609 (3), (15), 32.0609(20). Patau v. Rosendahl Corp., 19 A.S.R.2d 80 (1991).

32.0611 Temporary partial disability compensation.

In case of temporary partial disability resulting in decrease of earning capacity, the compensation shall be two-thirds of the difference between the injured employee's average weekly wages before the injury and his wage-earning capacity after the injury in the same or another employment, and shall be paid during the continuance of such disability, but not longer than 5 years.

History: 1967, PL, 10-15.

32.0613 Injury increasing existing permanent physical impairment or resulting in death which would not have occurred except for existing impairment.

(a) If an employee who has a permanent physical impairment from any cause or origin incurs a subsequent disability by injury arising out of and in the course of his employment, resulting in compensation liability for disability that is substantially greater by reason of the combined effects of the preexisting impairment and subsequent injury or by reason of the aggravation of the preexisting impairment than that which would have resulted from the subsequent injury, alone, the employer or his insurance carrier shall in the first instance pay all awards of compensation provided by this chapter, but such employer or his insurance carrier shall be reimbursed from the special fund created by 32.0516 for all compensation payments subsequent to those payable for the first 104 weeks of disability.

(b) If the subsequent injury of such an employee results in the death of the employee and it is determined that the death would not have occurred except for such preexisting permanent physical impairment, the employer or his insurance carrier shall in the first instance pay the compensation prescribed by this chapter, but shall be reimbursed from the special fund created by 35.0516 for all compensation payable in excess of 104 weeks.

(c) As used in this section, "permanent physical impairment" means any permanent condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed. No condition may be considered a permanent physical impairment unless it would support a rating of disability of 200

weeks or more if evaluated according to standards applied in compensation claims, or is one of the following conditions:

- (1) epilepsy;
- (2) diabetes;
- (3) cardiac disease;
- (4) arthritis;
- (5) amputated foot, leg, arm or hand;
- (6) loss of sight of one or both eyes or a partial loss of uncorrected vision of more than 75% bilaterally;
- (7) residual disability from poilyomyelitis;
- (8) cerebral palsy;
- (9) multiple sclerosis;
- (10) Parkinson's disease;
- (11) cerebral vascular accident;
- (12) tuberculosis;
- (13) silicosis;
- (14) psychoneurotic disability following treatment in a recognized medical or mental institution;
- (15) haemophilia;
- (16) chronic osteomyelitis;
- (17) ankylosis of joints;
- (18) hyperinsulinism;
- (19) muscular dystrophy;
- (20) arteriosclerosis;
- (21) thrombophlebitis;
- (22) varicose veins;
- (23) heavy metal poisoning;
- (24) ionizing radiation injury;
- (25) compressed air sequelae;
- (26) ruptured intervertebral disc.

(d) In order to qualify under this section for reimbursement from the special fund, the employer must establish by written records that the employer had knowledge of the permanent physical impairment at the time that the employee was hired, or at the time the employee was retained in employment after the employer acquired such knowledge.

(e) An employer or carrier shall notify the Commissioner of any possible claim against the special fund as soon as practicable, but in no event later than 100 weeks after the injury or death.

(f) The special fund may not be bound as to any question of law or fact by reason of an award or an adjudication to which it was not a party or in relation to which it was not notified, at least 3 weeks prior to the award or adjudication, that it might be subject to liability for the injury or death.

(g) In all cases in which, following a previous disability, an employee receives an injury which is not covered by subsections (a) through (c), the employer shall provide compensation only for the disability caused by the subsequent injury. In determining compensation for the subsequent injury or for death resulting therefrom, the average weekly wages shall be such sum as will reasonably represent the earning capacity of the employee at the time of the subsequent injury.

History: 1967, PL 10-15.

32.0614 Payment of benefits to survivors of disabled employee who dies.

- (a) An award for disability may be made after the death of the injured employee.
- (b) Any compensation to which any deceased claimant would be entitled under 32.0609 except subsection (b) thereof, shall, notwithstanding death arising from cause other than the injury, be payable to and for the benefit of the following persons:
 - (1) if there is a surviving wife or dependent husband and no child of the deceased under the age of 18 years, to such wife or dependent husband;
 - (2) if there is a surviving wife or dependent husband and surviving child or children of the deceased under the age of 18 years, one-half shall be payable to the surviving wife or dependent husband and the other half to the surviving child or children;
 - (3) if there is a surviving child or children of the deceased under the age of 18 years, but no surviving wife or dependent husband, then to such child or children;
 - (4) if there is no surviving wife or dependent husband or child, then to the grandchildren or brothers and sisters if under the age of 18 years and dependent upon the deceased at the time of injury or then to each parent or grandparent of the deceased if dependent upon him at the time of injury.
- (c) The Commissioner may, in his discretion, require the appointment of a guardian for the purpose of receiving the compensation of a minor child. In the absence of such a requirement, the appointment for such a purpose shall not be necessary.

History: 1967, PL 10-15.

32.0615 Maintenance for injured employees undergoing vocational rehabilitation.

An employee who, as a result of injury, is or may be expected to be totally or partially incapacitated for a remunerative occupation, and who under the direction of the Commission, as provided by 32.0507, is being rendered fit to engage in a remunerative occupation, shall receive additional compensation necessary for his maintenance, not exceeding \$10 a week, which shall be paid out of the special fund established by 32.0516.

History: 1967, PL 10-15, and 1978, PL 15-98.

Amendments: 1978 Corrected internal reference citation.

32.0617 Death benefits.

- (a) If an injury causes death, the compensation shall be known as a death benefit and shall be payable in the amounts, and to or for the benefit of the individuals following:
 - (1) Reasonable funeral expenses not exceeding \$1,000;
 - (2) if there is a surviving wife or dependent husband and no child of the deceased, to such surviving wife or dependent husband, 35 percent of the average wages of the deceased, during widowhood, or dependent widowhood, with 2 years compensation in one sum upon remarriage; and if there is a surviving child or children of the deceased, the additional amount of 15 percent of such wages for each child;
 - (3) In the case of the death or remarriage of such surviving wife or dependent husband, if there is one surviving child of the deceased employee, such child shall have his compensation increased to 35 percent of such wages; and if there is more than one surviving child of the deceased employee, to such children, in equal parts, 35 percent of such wages increased by 15 percent of such wages for each child in excess of one; provided, that the total amount payable shall in no case exceed two-thirds of such wages;

(4) If there is one surviving child of the deceased, but no surviving wife or dependent husband, then for the support of such child, 35 percent of the wages of the deceased; if there is more than one surviving child of the deceased, but no widow or dependent husband, then for the support of such children, in equal parts, 35 percent of such wages increased by 15 percent of such wages for each child in excess of one; the total amount payable under this paragraph shall in no case exceed two-thirds of such wages:

(5) If there is no surviving wife or dependent husband or child, or if the amount payable to a surviving wife or dependent husband and to children shall be less in the aggregate than $66 \frac{2}{3}$ percent of the average wages of the deceased, then for the support of grandchildren or brothers and sisters, if dependent upon the deceased at the time of injury, 15 percent of such wages for the support of each such individual, and for the support of each parent or grandparent of the deceased dependent upon him at the time of the injury, 25 percent of such wages during such dependency. In no case shall the aggregate amount payable under this paragraph exceed the difference between $66 \frac{2}{3}$ percent of such wages and the amount payable as hereinbefore provided to a surviving wife or dependent husband and for the support of a surviving child or children.

(b) In computing death benefits, the average weekly wages of the deceased may not be considered to be more than \$205 nor less than \$40, but the total weekly compensation may not exceed the weekly wages of the deceased.

(c) All questions of dependency shall be determined as of the time of the injury.

(d) Compensation paid under this section to aliens not residents or about to become nonresidents of the United States, the Territory of American Samoa, Western Samoa or Canada shall be the same in amount as provided for residents. Dependents in any foreign country shall be limited to a surviving wife and child or children, or if there is no surviving wife or child or children, to a surviving father or mother whom the employee has supported, either wholly or in part, for the period of one year prior to the date of the injury. The Commission may, at its option or upon the application of any party in interest, commute all future installments of compensation to be paid to such aliens by paying or causing to be paid to them a percentage or not less than one-half of the commuted amount of such future installments of compensation as determined by the Commission.

(e) The Commissioner may, in his discretion, require the appointment of a guardian for the purpose of receiving the compensation of a minor child. In the absence of such a requirement the appointment of a guardian for such purposes shall not be necessary.

History: 1967, PL 10-45; amd 1977, PL 15-45; amd 1981, PL 17-25 § 1.

Amendments: 1977 Subsection (a) (1): raised expense amount from \$400 to \$1,000.

32.0619 Liability for medical and hospital services, treatment and supplies.

(a) The employer shall furnish where no other provision is made, such medical, surgical, and other attendance or treatment, nurse, hospital service, medicine, crutches, and apparatus for such period as the nature of the injury or the process of recovery may require.

(b) If the employer fails to provide the same after request by the injured employee, such injured employee may do so at the expense of the employer.

(c) The employee is not entitled to recover any amount expended by him for such treatment or services unless his employer has refused or neglected to do so, or unless the nature of the injury required such treatment or services and the employer or his superintendent or foreman, having knowledge of such injury has neglected to provide the same; nor may any claim for medical or surgical treatment be valid pad enforceable, as

against an employer, unless, within 20 days following the first treatment, the physician giving such treatment furnishes to the employer and the Commissioner a report of the injury and treatment on a form prescribed by the Commission. The Commissioner may excuse the failure to furnish such report within 20 days if he finds it to be in the interest of justice to do so, and he may, upon application by a party in interest, make an award for the reasonable value of such medical or surgical treatment so obtained by the employee.

(d) If at any time the employee unreasonably refuses to submit to medical or surgical treatment, the Commissioner may, by order, suspend the payment of further compensation during such time as such refusal continues, and no compensation may be paid at any time during the period of such suspension unless the circumstances justified the refusal.

(e) Whenever in the opinion of the Commissioner a physician has not impartially estimated the degree of permanent disability or the extent of temporary disability of any injured employee, the Commissioner has the power to cause such employee to be examined by a physician selected by the Commissioner and to obtain a report containing his estimate of such disabilities. If the report of such physician shows that the estimate of the physician has not been impartial from the standpoint of such employee, the Commissioner has the power, in his discretion, to charge the cost of such examination to the carrier.

(f) All fees and other charges for treatment or service shall be limited to such charges as prevail in the same community for similar treatment of injured individuals of like standard of living, and shall be subject to regulation by the Commissioner.

(g) The liability of an employer for medical treatment may not be affected by the fact that his employee was injured through the fault or negligence of a third party not in the same employ. The employer shall, however, have a cause of action against such third party to recover any amounts paid by him for such medical treatment in like manner as provided in 32.0669.

History: 1967, PL 10-15.

Case Notes:

Workmen's Compensation Commission has wide discretion in awarding medical and related travel expenses. A.S.C.A. § 32.0619. *Continental Insurance Co. v. Workmen's Compensation Commission*, 15 A.S.R.2d 130 (1990).

When a claimed conflict between two statutes is not relevant and not at issue, the court will decline comment. A.S.C.A. § 32.0619(a)(f). *National Pacific Insurance Co. v. Commissioner of the American Samoa Government's Workmen's Compensation Commission*, 22 A.S.R.2d 15 (1992).

II. BASIS

32.0621 Basis of compensation-Computation.

Except as otherwise provided in this chapter, the average weekly wage of the injured employee at the time of the injury shall be taken as the basis upon which to compute compensation and shall be determined as follows:

(a) If at the time of the injury the wages are fixed by the week, the amount so fixed shall be the average weekly wage.

(b) If at the time of the injury the wages are fixed by the month, the average weekly wage shall be the monthly wage so fixed multiplied by 12 and divided by 52.

(c) If at the time of the injury the wages are fixed by the year, the average weekly wage shall be the yearly wage so fixed, divided by 52.

(d) (1) If at the time of the injury the wages are fixed by the day or hour, or by the output of the employee, the average weekly wage shall be the wage most favorable to the employee, computed by dividing by 13 the wages (not including overtime or premium pay) of the employee earned in the employ of the employer in the first, second, third or fourth period of 13 consecutive calendar weeks in the 52 weeks immediately preceding the injury.

(2) If the employee has been in the employ of the employer less than 13 calendar weeks immediately preceding the injury, his average weekly wage shall be computed under paragraph (d) (1), taking the wages (not including overtime or premium pay) for such purpose to be the amount he would have earned had he been employed by the employer the full 13 calendar weeks immediately preceding the injury and had worked when work was available to other employees in a similar occupation.

(3) If at the time of the injury an hourly wage had not been fixed or could not be ascertained, the wage for the purpose of calculating compensation shall be taken to be the usual wage for similar services where such services are rendered by paid employees.

(e) In occupations which are exclusively seasonal and therefore cannot be carried on throughout the year, the average weekly wage shall be taken to be one fifty-second of the total wages which the employee has earned from all occupations during the 12 calendar months immediately preceding the injury. In computing the earnings from other occupations, the reasonable value of the services of the employee may be taken into account.

(f) In case of volunteer firemen, police, and civil defense members or trainees, the income benefits shall be based on the average weekly wage in their regular employment.

(g) If the employee was a minor, apprentice or trainee when injured, and it is established that under normal conditions his wages should be expected to increase during the period of disability, that fact may be considered in computing his average weekly wage.

(h) When the employee is working under concurrent contracts with 2 or more employers and the defendant employer has knowledge of such employment prior to the injury, his wages from all such employers shall be considered as if earned from the employer liable for compensation.

History: 1967, PL 10-15.

Case Notes:

Subsection (d)(i): Bus driver who was paid a percentage of fares less operating expenses was paid wages "fixed by output" of the employee. *Enekosi v. Workmen's Compensation Commissioner*, 3 A.S.R. 2d 81(1986).

In occupational disease cases, the best estimate of the "date of injury" will ordinarily be the date on which the progress of the disease made it impossible for the claimant to continue working. A.S.C.A. § 32.0621. *Continental Insurance Co. v. Workmen's Compensation Commission*, 15 A.S.R.2d 130 (1990).

Bus driver who was paid a certain percentage of his total fares minus certain expenses of operating the bus was paid a wage "fixed by output" within the meaning of workers' compensation statute. A.S.C.A. § 32.0621. *Enekosi v. Tu'ufuli*, 3 A.S.R.2d 81 (1986).

Driver who was paid a percentage of bus fare receipts less fuel expenses was properly held to be an employee whose wages are "fixed by output" within the meaning of the workmen's compensation statutes, rather than one whose wages are neither "fixed" nor "ascertainable". A.S.C.A. § 32.0621 (d)(1),(3). *Enekosi v. Moaali'itele*, 6 A.S.R.2d 49 (1987).

That an employee's wage may have been less than required by the federal minimum wage laws did not make it improper for Workmen's Compensation Commission to base his compensation award on his actual wage in accordance with territorial statute. A.S.C.A. § 32.0261. *Enekosi v. Tu'ufuli*, 3 A.S.R.2d 81 (1986).

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Driver who was paid a percentage of bus fare receipts less fuel expenses was properly held to be an employee whose wages are "fixed by output" within the meaning of the workmen's compensation statutes, rather than one whose wages are neither "fixed" nor "ascertainable". A.S.C.A. § 32.0621 (d)(1),(3). *Enekosi v. Moaali'itele*, 6 A.S.R.2d 49 (1987).

32.0622 Wage-earning capacity of employees with temporary partial disability or permanent partial disability.

The wage-earning capacity of an injured employee in cases of partial disability under subsection (b) of 32.0609 and 32.0611 shall be determined by his actual earnings if such actual earnings fairly and reasonably represent his wage-earning capacity. If the employee has no actual earnings or if his actual earnings do not fairly and reasonably represent his wageearning capacity, the Commissioner may, in the interest of justice, fix such wage-earning capacity as shall be reasonable, having due regard to the nature of his injury, the degree of physical impairment, his usual employment and any other factors or circumstances in the case which may affect his capacity to earn wages in his disabled condition, including the effect of disability as it may naturally extend into the future.

History: 1967, PL 10-15.

32.0624 Guardian for minor or incompetent.

The Commissioner may require the appointment of a guardian or other representative by a court of competent jurisdiction for any individual who is mentally incompetent or a minor. Such guardian or representative shall receive any compensation payable to such individual under this chapter and Chapter 32.05 and exercise the power granted to, or perform the duties required of, such person under this chapter and Chapter 32.05.

History: 1967, PL 10-15.

III. CLAIMS

32.0626 Notice of injury or death-Contents-Delivery-Failure to give.

(a) Notice of an injury or death for which compensation is claimed under this chapter and Chapter 32.05 must be given, within 30 days after the date of such injury or death, to the Commissioner and to the employer.

(b) Such notice must be in writing, contain the name and address of the employee and a statement of the time, place, nature and cause of the injury or death, and be signed by the employee or by some individual on his behalf, or in case of death, by any individual claiming to be entitled to compensation for such death or by an individual on his behalf.

(c) Notice to the Commissioner must be given by delivering it to him or sending it by mail addressed to his office, and to the employer by delivering it to him or by sending it by mail addressed to him at his last known place of business. If the employer is a partnership, such notice may be given to any partner, and if a corporation, such notice may be given to any agent or officer thereof upon whom legal process may be served or who is in charge of the business in the place where the injury occurred.

(d) Failure to give such notice does not bar any claim under this chapter and Chapter 32.05:

(1) if the employer, or his agent in charge of the business in the place where the

injury occurred, or the carrier, had knowledge of the injury or death and the Commissioner determines that the employer or carrier has not been prejudiced by failure to give such notice; or

(2) if the Commissioner excuses such failure on the ground that for some satisfactory reason such notice could not be given; or

(3) if objection to such failure is not raised before the Commissioner at the first hearing of a claim for compensation in respect of such injury or death.

History: 1967, PL 10-15.

32.0627 Time for filing.

(a) The right to compensation for disability shall be barred unless a claim therefor is filed within one year after the injury or last payment of compensation without an award.

(b) The right to compensation for death shall be barred unless a claim therefor is filed within one year after the death or within one year after the dependents know or by exercise of reasonable diligence should know the possible relationship of the death to the employment.

(c) If the nature of the injury or disease, or its relationship to the employment, is not known to the claimant, the time for filing shall not begin to run until the claimant has, or by exercise of reasonable diligence should have, such knowledge.

(d) Failure to file a claim within the prescribed period shall not bar a claim unless objection to such failure is made at the first hearing of such claim in which all parties in interest are given reasonable notice and opportunity to be heard.

(e) If any individual entitled to compensation under this chapter is mentally incompetent or a minor, the time limits in subsections (a) and (b) shall not be applicable so long as such individual has no guardian or other authorized representative, and shall be applicable only from the date of appointment of such guardian or other representative, or in the case of a minor, if no guardian is appointed before he becomes of age, from the date he becomes of age.

(f) Where recovery is denied any individual in a suit brought at law or in admiralty to recover damages in respect to injury or death, on the ground that such individual was an employee and that the defendant was an employer within the meaning of this chapter and that such employer has secured compensation to such employee under this chapter, the limitation of time prescribed in subsection (a) or (b) begins to run only from the date of termination of such suit.

(g) Subject to the other provisions of this section, a claim for compensation may be filed with the Commissioner, in accordance with regulation prescribed by the Commission, at any time after the first 7 days of disability following any injury, or at any time after death.

History: 1967, PL 10-15.

32.0628 Notice.

(a) Within 10 days after a claim is filed, the Commissioner, in accordance with regulations prescribed by the Commission, shall notify the employer and any other individual other than the claimant whom the Commissioner considers an interested party, that a claim has been filed.

(b) Such notice may be served personally upon the employer or other individual, or sent to such employer or individual by registered mail.

History: 1967, PL 10-15.

32.0629 Action on filed claim.

(a) At any time after a claim has been filed with him, the Commissioner may transfer such case to any member of the Commission for the purpose of making investigation, taking testimony, conducting physical examinations or taking such other necessary action therein as may be directed, for the primary purpose of creating a record for disposition by the Administrative Law Judge in accordance with A.S.C.A. 32.0635 to 32.0646.

(b) The commissioner or his designee shall also investigate, take testimony, conduct physical examinations or take such other necessary action therein as may be directed for the additional purpose of achieving a settlement with the claimant. The commissioner may hold informal hearings for forty-five days after the claim has been filed. If after expiration of 45 days there is no settlement, the commissioner or his designee shall forward the claim to the Administrative Law Judge for a decision to be made in accordance with A.S.C.A., 32.0635. The commissioner shall continue to investigate, take testimony, conduct physical examinations or take such other necessary action therein as may be directed by the Administrative Law Judge in accordance with the purposes set forth in sections (a) and (b) above.

History: 1967, PL 10-15; 2004, PL 28-17.

IV. HEARING

32.0635 No hearing ordered-Rejection or award of claim.

If no hearing is ordered within 20 days after notice is given, the Commissioner shall, by order, reject the claim or make an award regarding the claim.

History: 1967, P1- 10-15.

32.0636 Hearing claim-Notice, investigation, time limits.

(a) The Commissioner, when exercising his authority pursuant to 32.0629(b), and the Administrative Law Judge have full power and authority to hear and determine all questions regarding claims for compensation.

(b) The Commissioner and the Administrative Law Judge shall make or cause to be made such investigations as they considers necessary regarding the claim, and, upon application of any interested party, shall order a hearing thereon.

(c) If a formal hearing on such claim is ordered, the Administrative Law Judge shall give the claimant and other interested parties at least 10 days notice of such hearing, served personally or sent to by registered mail, and shall within 20 days after such hearing is had, by order, reject the claim or make an award regarding the claim.

History: 1967, PL 10-15, amd 2004, PL 28-17.

Case Notes:

The Workmen's Compensation Commissioner shall order a compensation-order hearing upon application of any interested party. A.S.C.A. § 32.0636(b). *Harris v. Commissioner of the American Samoa Government Workmen's Compensation Commission*, 24 A.S.R.2d 158 (1993).

32.0637 Hearings to be public-Record required.

Hearings before the Administrative Law Judge shall be open to the public and shall be either stenographically or mechanically reported. The Administrative Law Judge shall by

regulation provide for the preparation of a record of the hearings and other proceedings before the Administrative Law Judge.

History: 1967, PL 10-15, amd 2004, PL 28-17.

32.0638 Physical examination required.

An injured employee claiming or entitled to compensation shall submit to such physical examination by a duly qualified physician designated or approved by the Commission as the Commissioner or Administrative Law Judge may require. The place or places of such examination shall be reasonably convenient for the employee. Such physician or physicians as the employee, employer or earner may select and pay for may participate in an examination if the employee, employer or carrier so requests. Proceedings shall be suspended and no compensation may be payable for any period during which the employee may refuse to submit to examination.

History: 1967, PL 10-15, amd 2004, PL 28-17.

Case Notes:

Workmen's Compensation statute does not require the Commission to order an examination, but instead requires the claimant to submit to any examination which the Commission does order. A.S.C.A. §32.0638. *Continental Insurance Co. v. Workmen's Compensation Commission*, 15 A.S.R.2d 130 (1990).

32.0639 Costs in proceedings brought or continued without reasonable cause.

If the court having jurisdiction of proceedings in respect to any claim or compensation order determines that the proceedings in respect to such claim or order have been instituted or continued without reasonable ground, the costs of such proceedings shall be assessed against the party who has so instituted or continued such proceedings.

History: 1967, PL 10-15.

Case Note:

As used in this section, "costs" does not include fees and/or penalties inferentially, in re *Westerlund v. Scanlan*, 4 ASR 998 (1975).

Fees and costs reasonably incurred in combating appeal by employer from compensation award would be assessed against employer where, without reason, employer did not follow this chapter's provisions for notice by employer that he controverted claim, or provisions for judicial review of an award, appeal was too late and under the wrong law, three continuancies were granted because employer's attorney was either off the island or failed to appear and offered no explanation for failure, and employer's attorney appeared at the hearing, objected to the hearing and then left for other commitments". In re *Westerlund v. Scanlan*, 4 ASR 998 (1975).

A request for costs is properly denied in a negligence suit sounding in tort because it is not a proceeding "in respect to any claim or compensation order." A.S.C.A. § 32.0639. *Etimani v. Samoa Packing Co.*, 19 A.S.R.2d 1 (1991).

32.640.1 Conduct of investigation or hearing.

In making an investigation or inquiry or conducting a hearing, the Administrative Law Judge shall use Rules of Evidence and Procedure as applicable in the High Court of American Samoa as a guide, in accordance with A.S. C. A., 4.0607.

History: 1967, PL 10-15, amd 2004, PL 28-17.

32.0641 Right to be represented and to present evidence.

At a hearing, the claimant and employer may each present evidence in respect to such claim and may be represented by any individual authorized in writing for such purpose.

History: 1967, PL 10-15.

32.0642 Presumptions.

In any proceeding for the enforcement of a claim for compensation under this chapter and Chapter 32.05, it is presumed, in the absence of substantial evidence to the contrary, that:

- (1) the claim comes within the provisions of this chapter or Chapter 32.05;
- (2) sufficient notice of such claim has been given;
- (3) the injury was not occasioned solely by the intoxication of the injured employee;
- (4) the injury was not occasioned solely by the willful intention of the injured employee to injure or kill himself or another.

History: 1967, PL 10-15.

Case Notes:

There being evidence demonstrating a cause for the accident other than employee's intoxication, plaintiffs failed to overcome presumption intoxication was not the sole cause of the accident *AIU-South Pacific Ins. v. Workmen's Compensation Commission* ASR (1979).

The presumption codified in 24 A.S.C.A. 452 (32.0642) operated to shift the burden of proof on the issue of causation to appellant, and required appellant to meet that burden by substantial evidence. *Hartford Fire- Insurance Company v. Workmen's Compensation Commission of American Samoa and Vi Tuaua*, ASR (1980).

Workmen's compensation claimant's proof of existence of injury and of employment relationship raises presumption that claim falls within coverage of workmen's compensation laws and shifts to employer the burden of proving by substantial evidence that employment did not cause the injury. A.S.C.A. § 32.0642. *Star-Kist Samoa, Inc., v. Workmen's Compensation Commission*, 7 A.S.R.2d 149 (1988).

Court will not disturb Workmen's Compensation Commission decision if record contains evidence from which a reasonable person could conclude that the injury and death were work-related and it does not appear that the commission arbitrarily and capriciously disregarded substantial evidence to the contrary. A.S.C.A. §§ 32.0642, 32.0652. *Star-Kist Samoa, Inc., v. Workmen's Compensation Commission*, 7 A.S.R.2d 149 (1988).

32.0643 Declarations of deceased employee.

Declarations of a deceased, employee concerning the injury in respect to which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and shall, if corroborated by other evidence, be sufficient to establish the injury.

History: 1967, PL 10-15.

32.0644 Witnesses-Depositions.

No person may be required to attend as a witness in any proceeding before the commissioner or the Administrative Law Judge at a place outside the Territory, but the testimony of any witness may be taken by a deposition or interrogatories according to the rules of practice of the High Court of American Samoa.

History: 1967, PL 10-15, and 2004, PL 28-17.

32.0645 Witness fees.

Witnesses summoned in a proceeding before the Commissioner or the Administrative Law Judge or whose depositions are taken may receive the same fees and mileage as witnesses in the High Court of American Samoa.

History: 1967, PL 10-15, amd 2004, PL 28-17.

32.0646 Awards after death of employee.

An award of compensation for disability may be made after the death of an injured employee.

History: 1967, PL 10-15.

V. ORDER

32.0650 Filing of order-Delivery of copies.

The order rejecting the claim or making the award of compensation shall be filed in the Office of the Commissioner, and a copy thereof shall be. Transmitted, to the claimant and to the employer by delivery to them in person or by registered mail, to the last known address of each.

History: 1967, PL, 10-15.

32.0651 Effective date of order.

A compensation order becomes effective when filed, in the Office of the Commissioner and, unless proceedings for the suspension or setting aside of such order are instituted, becomes final at the expiration of the thirtieth day thereafter.

History: 1967, PL 10-15.

Case Notes:

Proceedings within the meaning of this section includes petition for reconsideration filed with Commission but does not include appeal under Administrative Procedure Act, as such is prohibited under subsection (b) of 4.1040. *Haleck v. Scanlan*, ASR (1977).

This section is a, statute-of limitations and precludes interference with a, compensation order after the 30-day limit has expired, so that request for injunction restraining enforcement of order, requested 6 months after order was filed, would be denied. *Haleck v. Scanlan*, 4 ASR. 841 (1975).

Judicial review of a compensation award must be instituted within 30 days of the date of filing of the award; otherwise the award becomes final and not subject to judicial review. *In re Westerlund v. Scanlan*, 4 ASR 998 (1975).

Although a Workmen's Compensation order is "effective" when filed in the Commissioner's office, it does not become "final" until after 30 days; during this period of time, the Commissioner may reconsider his order. A.S.C.A. § 32.0651. *Harris v. Commissioner of the American Samoa Government Workmen's Compensation Commission*, 24 A.S.R.2d 158 (1993).

32.0652 Judicial review of order-Stay of compensation payment.

(a) If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the Commissioner, and instituted in the High Court of American Samoa.

(b) The orders, writs and processes of the court in such proceedings may run, be served and be returnable, anywhere in the Territory.

(c) The payment of the, amounts required by an award, shall not be stayed pending final decision in any such proceeding unless, upon application for an interlocutory injunction, the court, on hearing and after not less than 1 days notice to the parties in interest and the Commissioner, allows the stay of such payments, in, whole or in part, where irreparable damage would otherwise ensue to the employer. The order of the court allowing any such stay shall contain, specific findings based, upon evidence submitted, to

the court and identified by reference thereto, that such irreparable, damage would result to the employer, and, specifying the nature of the damage.

History: 1967, PL 10-15.

Case Notes:

Irreparable damage to employer refers to uninsured employer, not government or government insurer. *Hartford Fire Ins. Co. v. Workmen's Compensation Commission*, ASR (1979).

Review standard for measuring "in accordance with law" is that stated in 4.1044. *Hartford Fire Ins. Co. v. Workmen's Compensation Commission*, ASR (1977).

Appeal must be action for injunctive relief. Appellate division, absent specific statutory authority to review Workmen's Compensation Commission orders, lacks jurisdiction. *Waite v. Workmen's Compensation Commission*. ASR (1976).

Cairn of employer seeking review of compensation award under Administrative Procedure Act provisions for review, set out in 4.1022. et seq., that this section and 32.0653 are fatally ambiguous, was without merit *In re Westerlund v. Scanlan*, 4 ASR 995 (1975).

Judicial review of compensation award must be instituted within 30 days of the date of filing of the award; otherwise the award becomes final and not subject to judicial review, *In re Westerlund v. Scanlan*, 4 ASR 998 (1975).

In view of this section's provision for review of a compensation order, award of benefits' could not be reviewed under the provisions of the Administrative Procedure Act where that act, 4-1022, provided that "judicial review may not be sought under this subchapter of any proceedings for which the law specifically provides other adequate means of judicial review" *In re Westerlund. Scanlan*, 4 ASR. 998 (1975).

A compensation claimant is a real party in interest under this section and is thus entitled as a matter of right to intervene in a proceeding under this section. *In re Westerlund. v. Scanlan*, 4 ASR 998 (1975).

Through proper procedure for intervention by a real party in interest in a proceeding under this section is by written motion to intervene since such party is entitled to intervene as a matter of right, there is no prejudice to an appellant if the technical requirement is waived and the real party in interest is allowed to proceed with a motion to dismiss the appeal. *In re Westerlund v. Scanlan*, 4, ASR 998 (1975).

Refusal to utilize the unambiguous provisions of this section stating the exact and only method of judicial review, such refusal being based on an alleged inadequate wording in 32.0653, which pertains only to enforcement proceedings, would be deemed completely unconscionable where there was no valid reason or explanation for not following this section. *In re Westerlund. Scanlan*, 4, ASR 998 (1975).

Territorial workmen's compensation statute, under which reviewing court could set aside decision of Workmen's Compensation Commission only if it was "not in accordance with the law," precluded court from reversing a finding of fact by the commission for which there was substantial evidence in the record of the commission's proceeding. A.S.C.A. § 32.0652. *Continental Insurance Co. v. Workmen's Compensation Commission*, 7 A.S.R.2d 105 (1988).

Decision of Workmen's Compensation Commission may be set aside only if the decision was not made in accordance with law. A.S.C.A. § 32.0652 *Continental Insurance Co. v. Workmen's Compensation Commission*, 8 A.S.R.2d 152 (1988).

Court reviewing findings of fact by workmen's compensation would not reverse a finding unless a reasonable person could not have concluded as the commission did from the evidence in the record. A.S.C.A. § 32.0652. *Continental Insurance Co. v. Workmen's Compensation Commission*, 7 A.S.R.2d 105 (1988).

Court would not reverse Workmen's Compensation Commission finding that fatal heart attack "arose out of and in the course of" decedent's employment, even though the heart attack had occurred at home rather than at work, where the commission record reflected that (1) decedent had a history of heart trouble but medical treatment had brought his condition under control in the months preceding his heart attack; (2) decedent had recently been transferred from his job as a night watchman to a highway maintenance job involving physical labor; (3) the punitive and involuntary transfer had created emotional pressures that testifying physician cited as a possible factor in the heart attack; (4) after the transfer decedent's symptoms had taken a drastic turn for the worse; (5) the heart attack had occurred eleven days after decedent had begun work on the road crew. A.S.C.A. §§ 32.0520, 32.0652. *Continental Insurance Co. v. Workmen's Compensation Commission*, 7 A.S.R.2d 105 (1988).

Workmen's Compensation Commission decision should be overturned on appeal only if it is not in accordance with the law. A.S.C.A. § 32.0652. *Star-Kist Samoa, Inc., v. Workmen's Compensation Commission*, 7 A.S.R.2d 149 (1988).

Workmen's Compensation Commission decision should be upheld by reviewing court if supported by substantial evidence, whether or not the court would have reached the same conclusion from the evidence as the commission did. A.S.C.A. § 32.0652. *Star-Kist Samoa, Inc., v. Workmen's Compensation Commission*, 7 A.S.R.2d 149 (1988).

Court will not disturb Workmen's Compensation Commission decision if record contains evidence from which a reasonable person could conclude that the injury and death were work-related and it does not appear that the commission arbitrarily and capriciously disregarded substantial evidence to the contrary. A.S.C.A. §§ 32.0642, 32.0652. *Star-Kist Samoa, Inc., v. Workmen's Compensation Commission*, 7 A.S.R.2d 149 (1988).

If a Workmen's Compensation Commission's statutory interpretation is permissible under the statutes and regulations, the court should defer to the Commission's decision; but if that construction is inconsistent with a statutory mandate, frustrates legislative policy, or renders the statutes ineffective, the court must set aside the decision. A.S.C.A. § 32.0652(a). *National Pacific Insurance Co. v. Commissioner of the American Samoa Government's Workmen's Compensation Commission*, 22 A.S.R.2d 15 (1992).

Statutory provision providing for judicial review of Workmen's Compensation Commission orders excludes other avenues of judicial review but does not preclude reconsideration proceedings at the administrative level. A.S.C.A. §§ 32.0652-32.0653. *Harris v. Commissioner of the American Samoa Government Workmen's Compensation Commission*, 24 A.S.R.2d 124 (1993).

32.0653 Enforcement proceeding.

(a) If any employer or his officers or agents fail to comply with a compensation order making an award that has become final, any beneficiary of such award, or the Commissioner, may apply to the High Court of American Samoa for the enforcement of the order.

(1) If the Court determines that the order was made and, served in accordance, with law and that such employer or his office is or agents have failed, to comply therewith, the court shall enforce obedience to, the order by writ of injunction or by other proper process, mandatory or otherwise.

(c) Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in, this section and 32.0652 and 32.0674.

History: 1967, PL, 10-15; amd 1977, PL 15-18 § 1.

Amendments: 1977 Changed citation style.

Case Notes:

Claim of employer seeking review of compensation award under Administrative Procedure Act provisions for review, set out in 41022 et seq., that this section and 32.06.52 are fatally ambiguous, was without merit *In re Westerlund v. Scanlan*, 4 ASR 995 (1975).

Statutory provision providing for judicial review of Workmen's Compensation Commission orders excludes other avenues of judicial review but does not preclude reconsideration proceedings at the administrative level. A.S.C.A. §§ 32.0652-32.0653. *Harris v. Commissioner of the American Samoa Government Workmen's Compensation Commission*, 24 A.S.R.2d 124 (1993).

32.0654 Modification of order.

(a) Upon his own initiative or upon the application of any party in interest, and on the ground of a change in conditions or a mistake in a determination of fact by the Commissioner, the Commissioner may, at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one year after the rejection of a claim, review a compensation case, in accordance with the procedure regarding claims, and issue a new compensation order which may terminate, continue, reinstate, increase or decrease such compensation, or award, compensation. Such new order may not effect any compensation previously paid, except that an, award increasing the compensation rate may be made effective front the date of the injury. If any part of the, compensation due or to become, due is unpaid, an award decreasing the compensation rate, may be made, effective from the date of the injury, and. any payment made prior to the, time of the award in excess of such decreased

rare shall be, deducted, from any unpaid compensation, in such manner and by such method as may be determined, by the, Commissioner with the approval of the Commission.

(b) The Commission may at any time, either of its own motion or upon the application of any party, reopen any case on, the ground that fraud has been practiced on any party, and render such decision as is proper under the circumstances.

History: 1967, PL 10-15; amd 1979, PL 16-16 § 1.

Amendments: 1979 Subsection (b) was added, and section, as it read prior to amendment, was designated subsection (a).

VI. PAYMENTS

32.0660 Installments.

(a) Compensation under this chapter and Chapter 32.05 must be paid periodically, promptly and directly to the individual entitled thereto, without an award, except where liability to pay compensation is controverted by the employer.

(b) The first installment of compensation becomes due on the fourteenth day after the employer has knowledge of the injury or death, on which date all compensation then due shall be paid. Thereafter, compensation must be paid in semimonthly installments except where the Commissioner determines that payment in installments should be made monthly or at some other interval

History: 1967, PL 10-15.

32.0661 Notice of beginning, suspension and end.

(a) Upon making the, first payment, and upon suspension of payment for any cause, the employer shall immediately notify the Commissioner, in accordance with a form prescribed by the Commission, that payment of compensation has begun or has been suspended, as the case may be.

(b) Within 16 days after final, payment of compensation has been made, the employer shall send to the Commissioner a notice, in accordance with a form prescribed by the Commission, stating that such, final payment has been made, the total amount of compensation paid, the names of the employee and, of any other individuals to whom compensation has been paid, the date, of the injury or death and the date up to which compensation has been paid.

History: 1967, PL 10-15.

32.0662 Notice of controverted claim.

If the employer controverts the right to compensation, he shall file with the Commissioner, on or before the 14th day after he has knowledge of the alleged injury or death, a notice in accordance, with a form prescribed by the Commission stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury or death and the grounds upon which the right to compensation is controverted.

History: 1967, PL, 10-15.

32.0663 Failure to make.

(a) If any installment of compensation payable without an award is not paid within 14 days after it becomes due, there shall be added to such unpaid installment an amount equal, to 10% thereof, which shall be paid at the same time as such, installment, unless notice is filed under 32.0661, or unless such nonpayment is excused by the Commissioner after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

(b) If compensation payable under the terms of an award is not paid within 10 days after it becomes due, there shall, be added to such unpaid compensation an amount equal, to 20% thereof which shall, be, paid, at the same time as, such compensation unless review of the, compensation order making such, award is had and an interlocutory injunction staying payment is allowed by the court.

History: 1967, PL 10-15, amd 1977, PL 15-18 § 2.

Amendments: 1977 Subsection (a): changed citation style.

32.0664 Actions to protect rights.

The Commissioner may, upon his own initiative at any time in a case in which payments are being made without an award, and shall, in any case where right to compensation is controverted or payment of compensation has been stopped or suspended, upon receipt of notice from any individual entitled to compensation or from the employer, that the right to compensation is controverted or that payment of compensation has been stopped or suspended, make such investigations, cause such medical examinations to be made, hold such, hearings and take such further action, as he considers will properly protect the rights of all parties.

History: 1967, PL 10-15.

32.0665 Deposit to secure.

Whenever the commission deems it advisable, he may require any employer to make a deposit with the Treasurer of American Samoa to secure the prompt and convenient payment of compensation. Payments from such deposits pursuant to award shall be made by the Treasurer upon order of the Commissioner.

History: 1967, PL 10-15.

32.0666 Lump sum-Reimbursements.

(a) Whenever the Commissioner determines that is it in the interest of justice, the liability of the employer, for compensation or any part thereof, as determined by the Commissioner, may, with the approval of the Commission, be discharged by the payment of a lump sum equal to the present value of future compensation payments commuted, computed at 3% true discount compounded annually. The probability of the death of the injured employee or individual, entitled to compensation before the expiration of the period during which, he is, entitled, to compensation shall be, determined in accordance with the United States Life Table and the probability of the remarriage of the surviving wife shall be determined in accordance with the American Remarriage Table. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded.

(b) If the employer has made advance payments of compensation, he shall be entitled

to be reimbursed out of any unpaid installments or installments of compensation due.

History: 1967, PL 10-15.

Case Notes:

When a defendant has provided no showing regarding the context in which a release was signed--the negotiations preceding its execution; the circumstances under which it was signed; whether the underlying payment was a settlement under A.S.C.A. § 32.0668, commuted per A.S.C.A. § 32.0666; or whether the Commissioner had approved such settlement or issued a formal compensation order--an inference of invalidity must be drawn in plaintiff's favor for purposes of summary judgment. A.S.C.A. §§ 32.0668, 32.0666; T.C.R.C.P. 56. *Etimani v. Samoa Packing Co.*, 19 A.S.R.2d 1 (1991).

32.0667 Receipts.

An injured employee or, in the case of death, his dependents or personal representative, shall give receipts for payment, of compensation to the employer paying the same and such employer shall produce the same for inspection by the Commissioner, whenever required.

History: 1967, PL 10-15.

32.0668 Settlement of employer's liability.

In cases under subsection (b) of 32.0609 and 32.0611, whenever the Commissioner determines that it is in the best interests of an injured employee entitled to compensation, he may, with the approval of the Commission, approve agreed settlements of the interested parties, discharging the liability of the employer for such compensation, notwithstanding 32.0672 and subsection (b) of 32.0554. The sum so agreed upon shall be payable in installments as provided in subsection (b) of 32.0660, which installments shall be subject to commutation under 32.0666. If the employee should die from causes other than the injury after the Commission has approved an agreed settlement, the sum so approved shall be payable, in the manner prescribed in this section, to and for the benefit of the persons enumerated in 32.0614.

History: 1967, PL 10-15; amd 1977, PL 15-18 § 3.

Case Notes:

When a defendant has provided no showing regarding the context in which a release was signed--the negotiations preceding its execution; the circumstances under which it was signed; whether the underlying payment was a settlement under A.S.C.A. § 32.0668, commuted per A.S.C.A. § 32.0666; or whether the Commissioner had approved such settlement or issued a formal compensation order--an inference of invalidity must be drawn in plaintiff's favor for purposes of summary judgment. A.S.C.A. §§ 32.0668, 32.0666; T.C.R.C.P. 56. *Etimani v. Samoa Packing Co.*, 19 A.S.R.2d 1 (1991).

A settlement agreement which has been approved by the Workmen's Compensation Commission effectively discharges an employer's liabilities under the Act. A.S.C.A. § 32.0668. *Etimani v. Samoa Packing Co.*, 19 A.S.R.2d 1 (1991).

Only those settlements between the parties that have been approved by the Workmen's Compensation Commission have the effect of discharging an employer's liability for compensation. A.S.C.A. § 32.0668. *Patau v. Rosendahl Corp.*, 19 A.S.R.2d 80 (1991).

Amendment: 1977 changed style of citation.

32.0669 Recovery against third person.

(a) If an individual entitled to such compensation determines that some individual other than the employer or an individual or individuals in his employ are liable in

damages, he need not elect whether to receive such compensation or to recover damages against such third person, but acceptance of compensation under an award in a compensation order operates as an assignment to the employer of all rights of the individual entitled to compensation to recover damage against such third person unless such individual commences an action against such third person within 6 months after such award.

(b) Payment under 32.0516 operates as an assignment to the employer of all rights of the legal representative of the deceased to recover damages against such third person. The employer may either institute proceedings for the recovery of such damages or may compromise with such third person either without or after instituting proceedings. Any amount recovered by such employer on account of such assignment, whether or not as the result of a compromise, must be distributed as follows:

(1) The employer retains an amount equal to:

(A) the expenses incurred by him in respect to such proceedings or compromise, including a reasonable attorney's fee as determined by the commissioner;

(B) the cost of all benefits actually furnished by him to the employee under 32.0619;

(C) all amounts paid as compensation;

(D) the present value of all amounts thereafter payable as compensation, such present value to be computed, in accordance with a schedule prepared by the commissioner, and the present value of the cost of all benefits thereafter to be furnished under 32.0619, to be, estimated to be retained by the employer in a trust fund to pay such compensation and, the cost of such benefits as they become due, and to pay any such final remaining in excess thereof to the individual entitled to compensation or to the representative.

(2) The employer pays any excess to the individual entitled to compensation or to the representative, less 1/5 of such excess, which shall belong to the employer.

(c) If the individual entitled to compensation, institutes proceedings within the period prescribed in subsection (a), the employer is required to pay as compensation under this chapter a sum equal to the excess of the amount which the Commissioner determines is payable on account of such injury or death over the amount recovered against such third person.

(d) If a compromise and settlement is made with such third person by the individual entitled, to compensation or by his representative, in an amount less than the compensation to which such individual or representative would be entitled under this chapter, the employer is liable for compensation as determined in subsection (c) only if such compromise is made with his written approval.

(e) Where the employer is insured and the carrier has assumed the payment of the compensation, the carrier shall be subrogated to all rights of the employer under this section.

(f) The right to compensation or benefits under this chapter shall be the exclusive remedy to an employee when he is injured, or to his eligible survivors or legal representative if he is killed, by the negligence or wrong of any other individual or individuals in the same employ; provided, that this provision shall not affect the liability of an individual other than an officer or employee of the employer.

History: 1967, PL 10-15.

Case Notes:

Accepting a Workmen's compensation award in a compensation order assigns to the employer all rights to recover damages against a third person, unless the workman commences an action against the third

person within six months after such award. A.S.C.A. § 32.0669. *Patau v. Rosendahl Corp.*, 19 A.S.R.2d 80 (1991).

A voluntary payment of Workmen's compensation does not constitute an "award in a compensation order," which triggers an assignment of an injured worker's cause of action against a third party to his employer. A.S.C.A. § 32.0669. *Patau v. Rosendahl Corp.*, 19 A.S.R.2d 80 (1991).

The Workmen's compensation statute limits an employer's liability to pay compensation to the amount which the Commissioner determines is payable over the amount the employee recovered against a third person, and an employer may maintain an action against the employee for any overpayment. A.S.C.A. § 32.0669(c). *Etimani v. Samoa Packing Co.*, 19 A.S.R.2d 1 (1991).

32.0670 Employment rights of injured employees-Penalty.

(a) No employer may discharge or dismiss any employee or deny such employee the right to return to his employment solely because he suffers any work injury which is compensable under this chapter and Chapter 32.05 and which arises out of and in the course of employment with the employer unless it is shown to the satisfaction of the Commissioner that the employee will no longer be capable of performing his work as a result of the work injury and that the employer has no other available work which the employee is capable of performing and which becomes available after the dismissal or discharge and during the period thereafter until the employee secures new employment.

(b) The foregoing provisions do not apply to any minor employer under subsection (c) of 32.0521.

(c) Any employer who violates this section shall be fined in an amount not to exceed \$200, or be imprisoned for a period not to exceed 90 days, or both.

History: 1979, PL 16-9 § 1.

32.0671 Claims for services.

No claim for legal or other services rendered in respect of a claim, or an award for compensation, to or on account of any person, is valid unless approved by the Commissioner, or, if proceedings for review of the order of the Commissioner in respect to such claim or award are had before any court, unless approved by such court. Any claim so approved shall, in the manner and to the extent fixed by the Commissioner or such court, be a lien upon such compensation.

History: 1967, PL 10-15.

32.0672 Validity of liability.

No assignment of, or release of liability for, compensation or benefits due or payable under this chapter and Chapter 32.05, except as otherwise provided by this and Chapter 32.05, is valid, and such compensation and benefits shall be exempt from all claims of creditors and from levy, execution, attachment or other remedy for recovery or collection of a debt, which exemption may not be waived.

History: 1967, PL 10-15.

Case Notes:

Disallowing compromise contracts between the employer and employee, the Workmen's Compensation Act bars an agreement to prevent the employee from receiving or altering the amount of compensation fixed and guaranteed to him by statute. A.S.C.A. §§ 32.0554(b), A.S.C.A. § 32.0672. *Etimani v. Samoa Packing Co.*, 19 A.S.R.2d 1 (1991).

Because American Samoa's Workmen's Compensation Act disallows compromise contracts between the employer and employee, the employer's liability for workmen's compensation benefits, fixed and

guaranteed under the Act, may not be altered by way of contract. A.S.C.A. §§ 32.0554(b), 32.0672. Patau v. Rosendahl Corp., 19 A.S.R.2d 80 (1991).

Since no release is valid except as otherwise provided for by the Workmen's Compensation Act, summary judgment was not available when the record was unclear on whether the release agreement was approved by the Workmen's Compensation Commission. A.S.C.A. § 32.0672; T.C.R.C.P. 56. Patau v. Rosendahl Corp., 19 A.S.R.2d 80 (1991).

32.0673 Compensation a lien against assets.

Any person entitled to compensation under the provisions of this chapter and Chapter 32.05 has a lien against the assets of the carrier or employer for such compensation without limit or amount, and, is, upon insolvency, bankruptcy, or reorganization in bankruptcy proceedings or the carrier or employer, or both, entitled to preference and priority in the distribution of the assets of such carrier or employer, or both.

History: 1967, PL 10-15.

32.0674 Collection of defaulted payments.

(a) In case of default by the employer in the payment of compensation due under any award of compensation, for a period of 30 days after the compensation is due and payable, the individual to whom such compensation is payable may, within one year after such default, make application to the Commissioner for a supplementary order declaring the amount of the default

(b) After investigation, notice, and hearing in the manner provided in 32.0629 and 32.0636, the Commissioner shall make a supplementary order, declaring the amount of the default, which shall be filed in the same manner as a compensation order.

(c) In case the payment in default is an installment of the award, the Commissioner may, in his discretion, declare the whole of the award as the amount in default

(d) The applicant may file a certified copy of such supplementary order with the clerk of the High Court of American Samoa. Such supplementary order of the Commissioner shall, be final, and the court shall, upon the filing of the copy, enter judgment for the amount declared in default by the supplementary order if such supplementary order is in accordance with law.

(e) Review of the judgment so entered may be had as in civil suits for damages at common law.

(f) Final proceedings to execute the judgment may be, had by writ of execution in the form used by the court in suits at common law in actions of assumpsit.

(g) No fee is required for filing the supplementary order or for entry of judgment thereon, and the applicant is not liable for costs in a proceeding for review of the judgment unless the court otherwise directs.

(h) The court shall modify such judgment to conform to any later compensation order upon presentation of a certified copy thereof to the court.

(i) Where judgment cannot be satisfied by reason of the employer's insolvency or other circumstances precluding payment, the Commissioner may, in his discretion and to the extent he determines advisable after consideration of current commitments payable from the special fund established in 32.0516, make payment from such fund upon any award made under this chapter, and in addition, provided any necessary medical, surgical and other treatment required by 32.0619 in case of disability where there has been a default in furnishing medical treatment by reason of the insolvency of the employer. Such an employer shall be liable for payment into such fund of the amounts paid therefrom by the Commissioner under this subsection; and for the purpose of enforcing

this liability, the Commissioner, for the benefit of the fund, shall be subrogated to all the rights of the individual receiving such payment or benefits, including the right of lien and priority provided for by 32.0673 as against the employer and may, by a proceeding under this section or under 32.0653, or both, seek to recover the amount of the default or so much thereof as in the judgment of the Commissioner is possible, or the Commissioner may settle and compromise any such claim.

History: 1967, PL 10-15.